

PROFESSIONAL NEWSLETTER

DECEMBER 2024

A. DOCUMENTS OF NATIONAL ASSEMBLY

I. Law on value added tax No. 48/2024/QH15 dated 26 November 2024

The following are some notable new points of the 2024 Law on value added tax compared to the current Law.

1. Adjust goods and services not subject to VAT

Article 5 of the Law on value added tax 2024 adjusts the provisions on subjects not subject to VAT in Article 5 of the Law on value added tax 2008 as follows:

- Delete some subjects not subject to value added tax

Delete some subjects not subject to VAT according to the provisions of the Law on value added tax 2008, including:

- + Fertilizers; machinery and specialized equipment for agricultural production; offshore fishing vessels;
- + Securities depository; market organization services of stock exchanges or securities trading centers; other securities business activities...

- Exported products are resources and minerals that have been mined and processed into other products that are not subject to VAT and must be applied according to the List prescribed by the Government.

According to the Law on value added tax 2008, exported products are goods processed from resources and minerals with a total value of resources and minerals plus energy costs accounting for 51% or more of the product cost, which are not subject to VAT.

- Imported goods supporting and sponsoring natural disaster prevention, epidemics, and wars according to Government regulations are not subject to VAT.

2. Amendment of taxable price regulations for imported goods

Taxable prices of imports will be applied under Article 7 Law on value added tax 2024 since 01 July 2025, specially: taxable prices of imports are dutiable values (values on which import duty is charged) as prescribed by regulations of law on export and import duties plus (+) import duty plus (+) extra import duties as prescribed by law (if any), plus (+) excise duty (if any) plus (+) environment protection tax (if any).

Currently, for imported goods, the taxable price is the border-gate import price plus import tax (if any) and excise tax (if any) and plus plus (+) excise duty (if any) plus (+) environment protection tax (if any). The border-gate import price shall be determined under regulations on prices for calculating import tax.

3. Supplementing taxable prices for goods and services used for promotions

Article 7 of Law on value added tax 2024 supplements regulations: taxable prices on promotional goods and services prescribed by regulations of law on commerce shall be 0 (zero).

4. Adjusting value added tax rates of some goods and services
 - Non-taxable products are subject to 5%:
 - + Fertilizers;
 - + Fishing vessels in the sea.
 - Products subject to 5% changed to 10%:
 - + Unprocessed forest products;
 - + Sugar; by-products in sugar production, including molasses, bagasse, sludge;
 - + Specialized equipment and tools for teaching, research and scientific experiments;
 - + Cultural activities, exhibitions, physical education, sports; art performances; film production; import, distribution and screening of films.
5. Add some more subjects to apply 0% tax rate

Specifically, the 2024 Law on value added tax has added some goods and services that will apply a value added tax rate of 0%, including:

 - International transportation;
 - Construction and installation work abroad, in duty-free zones;
 - Goods sold in quarantine areas to individuals (foreigners or Vietnamese) who have completed exit procedures; goods sold at duty-free shops;
 - Export services including: services directly provided for overseas organizations and individuals and used outside of Vietnam; services directly provided for organizations in free trade zones and used within free trade zones to serve export manufacturing.

(Clause 1 Article 9 of Law on value added tax 2024)
6. Change conditions to deduct value added tax
 - Purchase of goods and services under VND 20 million must have a non-cash payment document

Currently, goods and services purchased each time with a value of less than VND 20 million do not need a non-cash payment document to deduct VAT according to the provisions of Clause 2, Article 12 of the Law on Value Added Tax 2008.

However, according to Clause 2, Article 14 of the Law on Value Added Tax 2024, all purchased goods and services must have a non-cash payment document, except for some special cases as prescribed by the Government.
 - Supplementing some documents for deducting input VAT

According to Clause 2, Article 14 of the Law on Value Added Tax 2024, for exported goods and services, packing slips, bills of lading, goods insurance documents (if any); except for some special cases as prescribed by the Government, input VAT is deductible.

B. OFFICIAL LETTER FOR GUIDANCE AND RESPONSES

● DEPARTMENT OF TAXATION

1. Binh Duong Tax Department: Letter No. 31856/CTBDU-TTHT dated 20 December 2024

Issue invoices for customers who don't want invoices

- Pursuant to Clause 1 Article 90 of Law on tax management No. 38/2019/QH14 dated 13 June 2019:

“Article 90. Rules for issuance, management and use of electronic invoices

1. When selling goods/services, the seller shall issue and send electronic invoices to buyers. The electronic invoices shall follow standard formats and contain sufficient information in accordance with tax laws and accounting laws, regardless of the value of each sale.”

- Pursuant to Decree No. 123/2020/NĐ-CP dated 19 October 2020 of the Government regulating invoices, documents:

+ At Clause 1 Article 4 regulating rulers for preparing invoices:

“Article 4. Rules for issuance, management and use of invoices and records

1. When selling goods or providing services, the seller shall issue and send invoices to buyers (including goods/services used for sales promotion, advertising or as samples, goods/services gifted, donated, exchanged or used as salary payment to employees and internal use (except goods which are internally rotated in production process), and goods rented, lent or returned). Such invoices shall have adequate contents written according to the provisions in Article 10 hereof, except e-invoices which must follow the standard format prescribed by tax authorities as prescribed in Article 12 hereof.

...”

+ At point b clause 5 Article 10 regulating the buyer's name, address and TIN

“b) If the buyer does not have a TIN, the invoice will not have the buyer's TIN. In case of sale of special goods/services to an individual mentioned in Clause 14 of this Article, the buyer's name and address are not mandatory on the invoice. In case of sale of goods/services to a foreigner in Vietnam, the buyer's information and address may be replaced with information in his/her passport or travel document and his/her nationality.”

+ At point a clause 12 Article 10 regulating some case that the electronic invoices do not need to have enough content.

“a) An electronic invoice does not necessarily have the buyer's electronic signature, even if goods/services are sold overseas. In case the buyer is a business establishment and both the buyer and the seller agrees to use digital or electronic signatures on the e-invoice issued by the seller, the invoice shall bear the buyer's and the seller's digital or electronic signatures as agreed.”

Based on the above regulations, Binh Duong Tax Department replies as follows:

In case the Company sells goods or provides services, the Company must issue an invoice to deliver to the buyer (including cases of goods and services used for

promotion, advertising, samples; goods and services used for giving, presenting, exchanging, paying in lieu of salary for employees and internal consumption) and must fully state the content as prescribed. In case the buyer does not take the invoice, the Company must still issue an invoice and the invoice must show full information as prescribed in Article 10 of Decree No. 123/2020/ND-CP.

**2. Tay Ninh Tax Department: Letter No. 3832/CTTNI-TTHT dated 27 November 2024
Regarding charter capital contribution of foreign investors**

- Clause 34 Article 4 of Law on enterprise regulates: “Charter capital means the total value of assets that have been contributed or promised by the members/partners/owners when the limited liability company or partnership is established; or the total of nominal values of the sold or subscribed shares when a joint stock company is established”.
- Point c and e of Clause 1 Article 67 Circular No. 200/2014/TT-BTC dated 22 December 2014 of the Ministry of Finance guiding enterprise accounting regime regulate:
 - “c) Enterprises shall only account for in account 411 - "owner's capital" according to the actual amount of capital contributed by owners, not record in accordance with committed, receivable sum of owners.”
 - “e) Capital holding of investors is determined in foreign currency
When the investment license defining the charter capital of the enterprise is determined in foreign currency equivalent to a Vietnam dong amount, determining the contributed capital by investors in foreign currencies (surplus or deficit, enough compared with charter capital) is based on the amount of foreign currency actually contributed, is not taken into account the conversion of foreign currencies into Vietnam Dong according to investment license.”
- Clause 3 Article 1 of Law No. 106/2016/QH13 dated 06 April 2016 amending and supplementing some articles of law on value added tax regulates:
 - ...
 - “Business establishments are not entitled to a VAT refund but are allowed to carry forward the undeducted tax amount of the investment project according to the provisions of the law on investment to the next period in the following cases:
 - a) The investment project of the business establishment does not contribute enough charter capital as registered; ...”
- Clause 3 Article 1 Circular No. 130/2016/TT-BTC dated 12 August 2016 of the Ministry of Finance regulating VAT refund for investment project.
 - “3. Refund of VAT for investment projects.
 - ...
 - c) In the following events, a business shall not be eligible for a refund but can carry forward remaining deductible VAT on its investment project to the subsequent period:
 - c.1) The charter capital of the investment project of the business has not been fully contributed as registered as per the laws. The business has submitted claims for refund of tax on its investment project since 01 July 2016 but the project's

registered charter capital was not fully contributed as per the laws on the date of application.

3. Quang Nam Tax Department: Letter No. 10169/CTQNA-TTHT dated 04 December 2024

Regarding tax incentive on corporate income tax

Clause 3 Article 10 of Circular No. 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance providing guidance on enterprise income tax regulates:

“5. New investment projects:

a) New investment projects eligible for enterprise income tax incentives provided in Articles 15 and 16 of Decree No. 218/2013/ND-CP include:

- Projects which are granted investment certificates for the first time from 01 January 2014, and generate turnover after the date of grant of such certificates.
- Domestic investment projects associated with the establishment of new enterprises capitalized at under VND 15 billion and being outside the list of conditional investment fields which are granted enterprise registration certificates from 01 January 2014.

...

To be eligible for enterprise income tax incentives under regulations, new investment projects must have investment licenses or investment certificates granted by competent state agencies or obtain investment permission in accordance with the investment law...”

- Clause 8 Article 1 Law No. 32/2013/QH13 dated 19 June 2013 of the National Assembly amending, supplementing some articles of Law on corporate income tax regulates:

“2. Incomes of enterprises from the execution of new projects of investment provided for in Clause 3 Article 13 of this Law, incomes of enterprises from the execution of new projects of investment in industrial parks, except for industrial parks in advantaged localities, are eligible for tax exemption for no more than 2 years, and eligible for 50% reduction in tax for no more than the next 4 years.”

- Clause 3, clause 4 Article 16 Decree No. 218/2013/ND-CP dated 26 December 2013 of the Government (clause 3 has been amended by clause 6 article 1 Decree No. 91/2014/ND-CP) detailing:

“3. Tax exemption for 2 years, reduction of 50% of tax payable for the next 4 years for incomes from performing new investment projects specified in Clause 3, Article 15 of this Decree and enterprise’s income from performing new investment projects in industrial parks (except for industrial parks located in the areas with advantageous socio-economic conditions);

...

4. The time for tax exemption or reduction specified in this Article is calculated continuously from the first year of assessable income from the new investment projects entitled to tax incentive. Where there is no assessable income in the first three years, from the first year of assessable income from the new investment project, the time for tax exemption or reduction is calculated from the fourth year. The time for tax exemption or reduction applied to high-tech enterprises or agricultural enterprises applying high-tech specified in Clause 1 of this Article is

calculated from the time of being recognized as high-tech enterprises or agricultural enterprises applying high-tech.

Where in the first tax period but the enterprise's new investment project with the time of production and business exempted from or reduced in tax of less than 12 (twelve) months, the enterprise shall be entitled to the tax exemption or reduction for new investment project in that tax period or registration with the tax authority the time of starting the tax exemption or reduction from the next tax period."

- Clause 5 Article 10 Circular No. 96/2015/TT-BTC supplementing point 8a Article 18 of Circular No. 78/2014 as follows:
"8a. In the first tax period, if an investment project of an enterprise (including new investment project, expanded investment project, hi-tech enterprise and hi-tech agriculture enterprise) has a production and business duration eligible for tax incentives of under 12 (twelve) months, the enterprise may choose to enjoy tax incentives for its investment project right in the first tax period or register with the tax agency to enjoy tax incentives from the subsequent tax period. If the enterprise registers to enjoy tax incentives from the subsequent tax period, it shall determine the payable tax amount of the first tax period and pay it to the state budget under regulations."
- Clause 1 and clause 2 Article 10 of Circular No. 96/2015/TT-BTC regulating conditions to apply corporate income tax incentives.
- Article 22 of Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance regulating procedures for application of CIT incentives:
Enterprises shall determine by themselves conditions for enjoyment of tax incentives, preferential tax rates, the tax exemption or reduction duration, and losses allowed to be cleared against taxed incomes in order to declare and finalize tax with tax agencies...."

4. Bac Giang Tax Department: Letter No. 8258/CTBGI-TTHT dated 29 November 2024
Regarding tax policy

Based on Law on enterprise 2020.

- At Article 34 regulating contributed assets
"1. Contributed assets include VND, convertible foreign currencies, gold, land use right (LUR), intellectual property rights, technologies, technical secrets, other assets that can be converted into VND.
2. Only the individual or organization that has the lawful right to ownership or right to use the asset mentioned in Clause 1 of this Article may contribute it as capital as prescribed by law."
- At clause 1 Article 35 regulating transfer of ownership of contributed assets
"1. Transfer of contributed assets by members of a limited liability company, partners of a partnership, shareholders of a joint stock company shall comply with the following regulations:

a) For assets whose ownership have been registered and LURs, the capital contributor shall follow procedures for transfer the ownership of such assets or the LUR to the company as prescribed by law. This transfer is exempt from registration fee;..”

- At clause 2 Article 119 regulating obligations of shareholders

“2. Do not withdraw contributed capital in the form of ordinary shares in any shape or form, unless the shares are purchased by the company or other persons. The shareholder that withdraws all or part of the share capital against regulations of this Clause and persons with related interests in the company shall have a liability for the company’s debts and other liabilities which is equal to the value of the shares withdrawn and the damage caused by this action.”

Pursuant to Article 50 of Law on tax management 2019 regulating tax liability imposition in case of tax offences:

“1. Tax liability will be imposed if the taxpayer:

...

dd) buys, sells, trades goods and record values thereof against their market prices;”

Pursuant to clause 6 Article 4 Circular No. 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance regulating goods and services not subjected to VAT:

“6. Transfer of right to use land (hereinafter referred to as land tenure).”

Pursuant to Circular No. 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance guiding Decree No. 218/2013/NĐ-CP dated 26 December 2013 of the Government detailing and guiding Law on corporate income tax.

- At Article 16 regulating taxpayers

“1. Liable to pay CIT on incomes from real estate transfer are enterprises of all economic sectors and business lines having incomes from real estate transfer; and real estate enterprises having incomes from land sublease.

2. Incomes from real estate transfer include income from the transfer of land use rights, or land lease right (including also the transfer of projects associated with the transfer of land use rights or land lease right in accordance with law); income from the sublease of land of real estate enterprises in accordance with the land law regardless of whether there is an infrastructure facility or architectural work attached to land; income from the transfer of houses or construction works attached to land, including their appurtenances, in case the value of such appurtenances is inseparable upon the transfer, regardless of whether land use rights or land lease right are/is transferred; and income from the transfer of house ownership or use right.

Real estate enterprises that have income from the sublease of land do not include those that only lease houses, infrastructure facilities or architectural works on land.”

- At Article 17 regulating tax bases:

Bases for calculating income tax on real estate transfer include taxed income and tax rate.

Taxed income equals (=) taxable income minus (-) previous years' losses from real estate transfer (if any).

1. Taxable income

Taxable income from real estate transfer is the turnover from real estate transfer minus the cost of the real estate and deductible expenses related to the real estate transfer.

.....

2. The CIT rate for real estate transfer is 22% (or 20% from January 1, 2016).

3. Determination of payable CIT amounts:

The amount of CIT on real estate transfer in a tax period is the taxed income from real estate transfer multiplied by (x) the tax rate of 22%.

Income from real estate transfer shall be separately determined for tax payment declaration. The preferential tax rates and tax exemption and reduction duration guided in Chapter VI of this Circular are not applicable to income from real estate transfer.

Losses from real estate transfer, if any, shall be handled under the guidance in Clause 3, Article 9 of this Circular.

Dossiers for declaration and payment and documents of payment of CIT on incomes from real estate transfer in geographical areas where the transferred real estates are located serve as a basis for carrying out procedures for tax finalization in geographical areas where enterprises are headquartered...”

Based on the above regulations and instructions and the content of the Company's official dispatch, the Bac Giang Tax Department provides the following instructions:

- Regarding the withdrawal of capital contributions from shareholders: Regarding the procedure for returning capital contributions to shareholders, the Company is requested to contact the Department of Planning and Investment of Bac Giang Province for instructions on implementation in accordance with the provisions of law.

- Real estate transfer: In case the Company has transferred land use rights as capital contributions from Shareholders during the year to serve the Company's production and business activities, then:

+ Regarding VAT: the transfer of land use rights is not subject to VAT according to the provisions of Clause 6, Article 4 of Circular No. 219/2013/TT-BTC.

+ Regarding corporate income tax: the amount of corporate income tax in the tax period for the Company's land use rights transfer activities is equal to taxable income multiplied by the tax rate of 20% according to the provisions of Article 17 of Circular No. 78/2014/TT-BTC. Revenue from land use rights transfer activities is based on the normal transaction value on the market. In case the Company buys, sells, exchanges and accounts not according to the normal transaction value on the market, the tax will be determined according to the provisions of Article 50 of the Law on Tax Administration 2019.

XXXXXXXXXXXX