

Tax Alert

January 2024

DRAFT LAW ON VALUE ADDED TAX

On 29 December 2023, the National Assembly Standing Committee ratified Resolution No. 41/2023/UBTVQH15 on adjustment of program on development of laws and ordinances in 2024. Included is the draft Value Added Tax (“VAT”) amendment law which will be proposed to the National Assembly for comments at the 7th working session (which is scheduled to take place in May 2024) and approved at the 8th working session (which is scheduled to take place in October 2024).

The draft VAT law has been released by the Ministry of Finance to seek public views and comments with some notable proposed changes as follows:

1. Goods and services not subject to VAT

- To remove the detailed list of services falling under for the scope of “credit provision services” not subject to VAT. Instead, taxpayers are required to refer to the Law on Credit Institutions in determining whether a service provided by credit institutions are subject to VAT or not;
- To limit the category of securities trading activities not subject to VAT by synchronizing the definitions of “securities trading services” with those prescribed under the Law on Securities. Other securities related activities which are not specifically mentioned under the draft VAT law will be subject to VAT;
- To clearly define capital transfer transactions not subject to VAT to distinguish them from project transfer and asset transfer transactions, which are subject to VAT;
- To clearly define “sale of debt” to include the transfer of both debts/payables and receivables of a business entity;
- To supplement goods imported by a financial leasing company for the purpose of financial leasing to entities within a non-tariff zone to not - subject - to – VAT category;
- To increase the threshold of annual revenue for business households and individuals to be exempt from VAT from VND100 million to VND150 million;
- To include “imported goods to support and sponsor for the purpose of preventing and fighting natural disasters, epidemics, and wars according to Government regulations” in the not-subject-to-VAT category.

2. VAT rates

- To limit the category of “exported services subject to 0% VAT” to specifically cover three groups of services provided to foreign organizations and individuals, including: rental of vehicles for use outside Vietnam’s territory; international transportation services; and, aviation and maritime services provided directly for international transportation purposes.
- To reclassify fertilizer products, fishing vessels and specialized machinery and equipment used for agricultural production from not subject to VAT to subject to 5% VAT;
- To further provide that medical equipment, medical machinery, and medical instruments that are subject to 5% VAT will be determined according to the prevailing laws and regulations on medical equipment management (i.e. the usage purpose needs to be taken into account in determining the applicable VAT rate);
- To define goods sold in duty-free shops as exported goods subject to 0% VAT.

3. Input VAT credit

- To clearly provide that taxpayers are allowed to declare the omitted input VAT invoices (i.e. the input VAT invoices which were not declared into the reporting period when it is issued) into the reporting period when the omission is detected but before the date when the tax authority announces the tax audit or tax inspection decision at the payers' premises;
- To lower the level of non-cash payment requirement from VND20 million to VND5 million;
- To supplement documents compulsorily required for input VAT credit and refund related to exported goods including packing lists, bills of lading, and cargo insurance documents.

4. Cases eligible for VAT refund

- To expand cases eligible for VAT refund as follows:
 - Business establishments that only produce goods and provide services subject to the 5% VAT rate and have accumulated input VAT that has not fully been credited of VND300 million or more after a period of 12 months or 04 quarters;
 - Business establishments having registered VAT declaration on credit method and having investment projects in compliance with investment laws and regulations are eligible for refund of input VAT incurred during the investment stage (*applicable to both new investment projects and expansion investment projects*) where the accumulated input VAT not fully credited is VND300 million or more. The time limit for business establishments to apply for VAT refund is within one year from the date when the investment project, investment phase, or investment unit is completed.
- To remove the requirement for determination of ratio in value of natural resources and minerals and the energy cost in the production cost of exported products being processed from natural resources and minerals (i.e. the 51% rule) for VAT refund purposes. Instead, the Government shall promulgate the List of natural resources and minerals exploited and processed into other products which are eligible for VAT refund assessment;
- To remove the provision of “no VAT refund” for investment projects by business establishments whose charter capital is not fully contributed;
- To remove the provision of VAT refund in cases of ownership conversion, enterprise conversion, merger, consolidation, division, separation, and business liquidation.

The draft VAT law also proposes several amendments and supplements to synchronize with certain specialized legal regulations, codifying some provisions / regulations that are being stably implemented under the subordinating regulations, aiming for policy transparency and avoiding difficulties/confusion during the law implementation.

Please contact KPMG should you need any further assistance in this regard.

Contact us

Hanoi

46th Floor, Keangnam Landmark 72,
E6 Pham Hung, Me Tri, Nam Tu Liem

T +84 (24) 3946 1600

Ho Chi Minh City

10th Floor, Sun Wah Tower,
115 Nguyen Hue, Ben Nghe, District 1

T +84 (28) 3821 9266

Da Nang

Unit D3, 5th Floor, Indochina Riverside Towers,
74 Bach Dang, Hai Chau I, Hai Chau

T +84 (236) 351 9051

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