

SOME NEW POINTS OF THE DRAFT LAW ON VALUE-ADDED TAX (AMENDED)

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The Law on Value-Added Tax 2008 was passed on June 3, 2008 at the third session of the XII National Assembly, and subsequently amended and supplemented in 2013, 2014, and 2016 (**Law on VAT 2008**). After more than 15 years since its official effective date (January 1, 2009), the Law on VAT 2008 has significantly contributed positive results to the state budget and the economy, however, this Law has also revealed certain inadequacies, making it incompatible with current socio-economic development. Therefore, the Ministry of Finance is drafting the Law on VAT (Amended) (the **Draft**) to refine the regulations on VAT policy, codify issues that have been empirically validated, and ensure the consistency of the legal system, aiming at international economic integration.

The Draft substantially inherits the Law on VAT 2008 but amends and supplements many provisions, closely following the requirements of the Tax System Reform Strategy to 2030 by the Prime Minister. In this Legal Newsletter, NHQuang&Associates would like to introduce some important new points of the Draft that could affect business activities, focusing on several aspects related to non-VAT taxable objects and VAT refund.

Amendment and supplementation of regulations on non-VAT taxable objects

The Draft has amended and supplemented 22 items related to non-VAT taxable objects, such as issues related to credit provision services, capital transfer, sale of secured assets to handle bad debts by Vietnamese credit institutions, the threshold of annual revenue for sale or service provision by business households and individuals not subject to VAT, etc. Inter alia, the regulation on capital transfer as a non-VAT taxable object will directly impact the operations of businesses.

Accordingly, capital transfers in businesses are typically large-value transactions leading to tax obligations that businesses need to pay attention to. The Law on VAT 2008 currently stipulates three forms



of capital transfer not subject to VAT, including (i) transfer of part or the whole of invested capital, including selling enterprises to other enterprises for conducting production and business (ii) transfer of securities, and (iii) other forms of capital transfer as prescribed by law.

Circular 219/2013/TT-BTC guiding VAT implementation has detailed these forms of capital transfer. Practice has shown the suitability and effectiveness of these provisions, thus the Ministry of Finance proposes to codify them into the Draft. Specifically, the forms of capital transfer stipulated in the Draft include: (i) transfer of part or the whole of capital amounts invested in other economic organizations (regardless of whether a new legal entity is established), (ii) transfer of securities, (iii) transfer of capital contribution rights, and (iv) other forms of capital transfer as prescribed by law (including selling enterprises to other enterprises for production and business in which the purchasers inherit all rights and obligations of the sold enterprises in accordance with law). Additionally, the Draft supplements cases that are not subject to non-VAT taxable objects, which include (i) transfer of investment projects and (ii) sale of assets. Therefore, businesses should note that transactions involving mergers and acquisitions in the form of investment project transfer or asset sale are likely to be subject to VAT in the future.

Amendment and supplementation of regulations on VAT refund

Firstly, amending and supplementing regulations on VAT refund for investment projects.

Under the Law on VAT 2008, a business establishment that has registered to pay VAT according to the tax credit method shall be entitled to tax refund if it has a *new project* undergoing investment phase and with an amount of VAT on purchased goods or services used for investment not yet credited and the remaining tax amount of three hundred million Viet Nam dong or more.

In order to ensure consistency with investment laws, the Draft supplements regulations to specifically identify investment projects eligible for VAT refund for enterprises registered to pay VAT by the credit method. Eligible investment projects are identified as follows: (i) *“investment projects”* (including new investment projects and expanded investment projects) as defined by investment laws (including investment projects divided into multiple stages or multiple investment categories, except for those that do not form fixed assets) undergoing investment phase, and (ii) *“oil and gas exploration, development projects under investment phase”* of businesses registering to pay VAT according to the tax credit method. Additionally, the Draft also supplements the procedure for offsetting input VAT incurred during the investment phase (not yet refunded) against the VAT payable from ongoing production and business activities (if any) before considering VAT refund.

Moreover, the Draft adds the VAT refund deadline for investment projects that have been completed but the business has not yet processed the refund of VAT incurred in the investment phase, which is one year from the completion date of the investment project or the completion date of the investment phase or category. In which, the completion date of the investment project is the first date of revenue generation from the investment project or the first date of revenue generation from the investment phase or category (for investment projects divided into multiple phases or categories).

Secondly, abolishing regulations on VAT refund for ownership conversion, enterprise conversion, merger, consolidation, division, separation, and operation termination.

Currently, under the Law on Enterprises 2020, after reorganization or conversion of business type, enterprises automatically inherit all legitimate rights and interests of the reorganized or converted enterprises (including the right to declare and deduct undeducted input VAT). However, under the Law on VAT 2008, some enterprises have filed for VAT refund for undeducted input VAT through reorganization or conversion of business type. According to tax authorities' statistics, in the period from 2018 to 2023, the average annual VAT refund for cases of ownership conversion, enterprise conversion, merger, consolidation, division, separation, and operation termination was approximately VND 412,000,000,000.

Therefore, to ensure consistency with the Law on Enterprises and minimize inappropriate VAT refund, the Draft removes the content on VAT refund for cases of ownership conversion, enterprise conversion, merger, consolidation, division, separation, and operation termination in Clause 4, Article 14 of the Draft.

Additionally, the Draft also adheres to five policy groups in the proposal for developing the Law on VAT (Amended) project approved by the Standing Committee of the National Assembly, including (1) Completing regulations on non-VAT taxable objects; (2) Completing regulations on VAT calculation prices; (3) Completing regulations on VAT rates; (4) Completing regulations on input VAT deduction; (5) Completing regulations on VAT refund.

In general, the Draft has refined the policies, and codified regulations empirically tested, ensuring the consistency of the VAT legal regulations in line with international tax reforms. In the upcoming period, the Ministry of Finance will continue to refine the Draft before submitting to the National Assembly for approval at the 8th session (which is expected to take place in October 2024). Businesses should update and study the amended and supplemented VAT policies in the Draft and keep track of the legislative process to promptly apply new regulations in production and business activities once the amended VAT Law officially takes effect.