

## THE GOVERNMENT

### **Decree No. 121/2011/ND-CP of December 27, 2011, amending and supplementing a number of articles of the Government's Decree No. 123/2008/ND-CP of December 8, 2008, detailing and guiding a number of articles of the Law on Value-Added Tax**

THE GOVERNMENT

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

*Pursuant to the June 3, 2008 Law on Value-Added Tax;*

*At the proposal of the Minister of Finance,*

DECREES:

**Article 1.** To amend and supplement a number of articles of the Government's Decree No. 123/2008/ND-CP of December 8, 2008, detailing and guiding a number of articles of the Law on Value-Added Tax, as follows:

**1. To amend and supplement Clause 2, Article 2 as follows:**

“2. Vietnam-based production and business organizations and individuals that purchase services (including services associated with goods) from foreign organizations without permanent establishments in Vietnam or overseas individuals not residing in Vietnam shall pay value-added tax.

Permanent establishments and overseas individuals not residing in Vietnam defined in this Clause comply with the laws on enterprise income tax and personal income tax.

The Ministry of Finance shall specify this Clause.”

**2. To add the following Clause 3 to Article 2:**

“3. Cases not requiring declaration and payment of value-added tax:

a/ Goods and services provided outside Vietnam by Vietnam-based taxpayers, except international transportation with overseas places of departure and arrival.

In case service provision activities are carried out both in Vietnam and overseas, while service provision contracts are signed between 2 (two) enterprises paying tax in Vietnam or having permanent establishments in Vietnam, such services are subject to value-added tax for the contract value

performed in Vietnam, except the provision of insurance services for imported goods;

b/ Revenues from compensation, bonus, support, transfer of the emission right and other financial revenues;

c/ Vietnam-based production and business organizations and individuals that purchase such services from foreign organizations without permanent establishments in Vietnam or overseas individuals not residing in Vietnam as repair of vehicles, machinery or equipment (including supplies and spare parts); advertising and marketing; investment and trade promotion; goods sale and service provision brokerage; training; or share of charges for international post or telecommunications services provided outside Vietnam between Vietnamese and foreign partners;

d/ Non-business organizations and individuals that are not value-added tax payers are not required to declare and calculate value-added tax when selling their assets, including assets they are using to secure loans at banks or credit institutions.”

**3. To amend and supplement Clause 1, Article 3 as follows:**

“1. For preliminarily processed products specified in Clause 1, Article 5 of the Law on Value-Added Tax, they are products which have only been cleaned, dried, peeled, pitted, cut, salted, frozen or otherwise ordinarily preserved.”

**4. To amend and supplement Clause 3, Article 3 as follows:**

“3. Insurance specified in Clause 7, Article 5 of the Law on Value-Added Tax covers life insurance; human health and accident insurance, student insurance and other insurance services related to humans; livestock insurance, crop insurance and other agricultural insurance services; reinsurance.”

**5. To amend and supplement Clause 4, Article 3 as follows:**

“4. Services provided for in Clause 8, Article 5 of the Law on Value-Added Tax are specified as follows:

a/ Credit extension services include:

- Loan provision;
- Discount and rediscount of negotiable instruments and other valuable papers;
- Guarantee;
- Financial leasing;

- Issuance of credit cards;
- Domestic and international factoring;
- Other forms of credit extension under law.

Assets which are used to secure loans of value-added tax payers or the ownership of which has been transferred to lenders, when sold, are subject to value-added tax, excluding goods not subject to value-added tax under Article 5 of the Law on Value-Added Tax.

b/ Securities trading covers securities brokerage, securities dealing, securities issuance underwriting, securities investment consultancy, securities depository, management of securities investment funds, management of securities investment companies; management of securities investment portfolios, market organization services provided by stock exchanges or securities transaction centers, services involving securities registered and deposited at Vietnam Securities Custody Center, provision of loans for clients to deposit, advance money for securities sale and other services under the Ministry of Finance’s regulations;

c/ Capital transfer covers the transfer of part or the whole of invested capital amount, including the sale of enterprises to other enterprises for production and business; securities transfer; and other forms of capital transfer under law;

d/ Debt sale;

e/ Foreign currency trading.”

**6. To amend and supplement Clause 12, Article 3 as follows:**

“12. Unprocessed natural resources and minerals specified in Clause 23, Article 5 of the Law on Value-Added Tax are natural resources and minerals not yet processed into other products.

The Ministry of Finance shall assume the prime responsibility for, and coordinate with related agencies in, guiding the determination of exploited natural resources and minerals not yet processed into other products mentioned in this Clause.”

**7. To add the following Clause 13 to Article 3:**

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

The Ministry of Finance shall specify public services not subject to tax mentioned in this Clause.”

**8. To amend and supplement Clause 1, Article 4 as follows:**



“1. For goods and services sold by production and business establishments, the taxable price is the selling price exclusive of value-added tax; for excise tax-liable goods and services, the taxable price is the selling price inclusive of excise tax but exclusive of value-added tax; for environmental protection tax-liable goods and services, the taxable price is the selling price inclusive of environmental protection tax but exclusive of value-added tax; for excise tax- and environmental protection tax-liable goods and services, the taxable price is the selling price inclusive of excise tax and environmental protection tax but exclusive of value-added tax.

For imported goods, the taxable price is the border-gate import price plus import duty (if any) and excise tax (if any) and environmental protection tax (if any). The border-gate import price shall be determined under regulations on dutiable prices of imports.

In case of purchase of services specified in Clause 1, Article 1 of this Decree, the taxable price is the payment price exclusive of value-added tax indicated in the service purchase contract.”

**9. To amend and supplement Clause 2, Article 4 as follows:**

“2. For goods and services used for barter, internal consumption or donation, the taxable price is the price for calculating value-added tax on goods and services of the same or equivalent kind at the time of barter or donation. Particularly for donation of letters of invitation (free) for art performances, fashion shows, beauty and model contests, sport competitions licensed by competent state agencies, the taxable price is zero.

Goods and services used for internal consumption mentioned in this Clause are those delivered or supplied by business establishments for consumption, excluding goods and services used for their production and business activities.”

**10. To amend and supplement Clause 3, Article 4 as follows:**

“3. For real estate trading, the taxable price is the real-estate transfer price minus (-) land price allowed to be subtracted for determining value-added tax.

a/ Land prices allowed to be subtracted for determining value-added tax are specified as follows:

- For land allocated by the State for building infrastructure and houses for sale, the land price allowed to be subtracted for determining value-added tax includes land rents to be paid into the state budget (exclusive of exempted or reduced land rents) and expenses for compensation and ground clearance under law;

- In case of land use right auction, the land price allowed to be subtracted for determining value-added tax is the successfully bid land price.

- In case of leasing land for building infrastructure and houses for sale, the land price allowed to be subtracted for determining value-added tax are land rents to be paid into the state budget (exclusive of exempted or reduced land rents) and expenses for compensation and ground clearance under law;

- In case business establishments are transferred land use rights from organizations or individuals, the land price allowed to be subtracted for determining value-added tax is the actual land price at the time of transfer, including the value of infrastructure (if any); business establishments may not declare and credit input value-added tax of infrastructure already included in the non-taxable subtracted value of land use rights. If the land price at the time of transfer cannot be determined, the to-be-subtracted land price for determining value-added tax is that set by provincial-level People's Committees at the time of signing transfer contracts;

- For real estate trading establishments doing business in the form of build-transfer (BT) and exchanging works for land, the to-be-subtracted land price for determining value-added tax is that set under law at the time of signing BT contracts.

b/ In case of infrastructure construction and commercial operation, or construction of houses for sale, transfer or lease, the taxable price is the sum earned according to the project execution schedule or payment schedule indicated in contracts.”

**11. To add the following Clause 7 to Article 4:**

“7. The taxable price of services provided both in Vietnam and overseas is the value of services provided in Vietnam as indicated in the service provision contract. If the value of services provided in Vietnam is not separately indicated in the contract, the taxable price shall be determined according to the ratio (%) of expenses arising in Vietnam to total expenses.

**12. To amend and supplement Points a, b, c and d, Clause 1, Article 6 as follows:**

“a/ Exported goods include goods exported abroad or sold into non-tariff areas or other cases in which goods are regarded as exports under law.

b/ Exported services include services provided directly to overseas organizations or individuals or organizations and individuals in non-tariff areas.

Overseas organizations are organizations without permanent establishments in Vietnam and other than value-added tax payers in Vietnam.

Overseas individuals include foreigners not residing in Vietnam and overseas Vietnamese who stay outside Vietnam during the time of service provision.

Organizations and individuals in non-tariff areas are those making business registration and other cases specified by the Prime Minister.

The Ministry of Finance shall specify services provided to overseas organizations or individuals which are ineligible for the tax rate of 0%.

c/ To be eligible for the tax rate of 0%, exported goods and services specified at Points a and b of this Clause must satisfy the conditions prescribed at Point c, Clause 2, Article 12 of the Law on Value-Added Tax, excluding services provided for international transportation which are considered exported services and eligible for the tax rate of 0% under regulations of the Ministry of Finance.

d/ International transportation mentioned in this Clause covers transportation of passengers, luggage and cargo along international routes from Vietnam abroad or vice versa, or both from and to overseas places. If international transportation contracts cover domestic transportation routes, international transportation also covers domestic routes.

**13. To amend and supplement Point a, Clause 1, Article 8 as follows:**

“a/ The added value of goods or services is the selling price of goods or services minus (-) the purchase price of such goods or services.

The selling price of goods or services is the actual selling price indicated on the goods or service sale invoice, inclusive of value-added tax, surcharges and additional charges earned by the seller.

The purchase price of goods or services is the value, inclusive of value-added tax, of purchased or imported goods or services, which are used for the production or trading of taxable goods or services.

If in a tax period, there is a negative (-) added value of gold, silver or gems, such negative value may be offset against the positive (+) added value of gold, silver or gems. If there is no positive (+) added value or the positive (+) added value is not enough to cover the negative (-) added value, the deficit may be forwarded to be included in the added value of the subsequent tax period of the year. At the end of a calendar year, the negative (-) added value may not be forwarded to the subsequent year”.

**14. To amend and supplement Point b and c, Clause 2 of Article 8 s follows:**

“b/ Vietnam based-foreign organizations and individuals doing business not under the Investment Law and other organizations failing to comply or fully

comply with regulations on accounting, invoice and voucher, excluding foreign organizations and individuals providing goods and services for prospecting, exploring and developing oil and gas fields.

Vietnamese partners shall credit and pay value-added tax on behalf of foreign organizations and individuals providing goods and services for prospecting, exploring and developing oil and gas fields at the rate specified by the Ministry of Finance. If such foreign organizations and individuals register, declare and pay tax according to the credit method, the tax amount paid at the rate specified by the Ministry of Finance may be subtracted from the payable tax amount.

c/ Gold, silver and gem trading activities.

If business establishments concurrently conduct gold, silver and gem trading, manufacturing and fashioning activities, tax on these activities shall be calculated directly on added value.

**15. To amend and supplement Article 9 as follows:**

“Article 9. Credit of input value-added tax

Input value-added tax credit must comply with Article 12 of the Law on Value-Added Tax.

1. Business establishments which pay value-added tax according to the credit method may credit input value-added tax as follows:

a/ Input value-added tax on goods or services used for the production or trading of goods or services subject to value-added tax may be wholly credited, including non-compensated input value-added tax of lost goods subject to value-added tax;

b/ For goods or services used for the production and trading of goods or services both subject and not subject to value-added tax, only the input value-added tax amount for goods or services used for the production and trading of goods or services subject to value-added tax may be credited. Business establishments shall separately account creditable and non-creditable input value-added tax amounts; if separate accounting cannot be conducted, the creditable input tax shall be calculated based on the ratio (%) between the turnover subject to value-added tax and the total turnover of sold goods or services.

The input value-added tax on fixed assets used for the production and trading of goods or services both subject and not subject to value-added tax may be wholly credited.

The input value-added tax on fixed assets in the following cases may not be credited but shall be included in the historical cost of fixed assets: fixed

assets exclusively used for the manufacture of weapons and military equipment for security and defense purposes; fixed assets and equipment of credit institutions, re-insurance businesses, life insurance enterprises, securities trading enterprises, hospitals or schools; civil aircraft and yachts not for commercial transportation of cargo or passengers, or for tourist or hotel business.

For fixed assets being passenger cars of 9 seats or less (except cars for commercial transportation of cargo or passengers, or for tourist or hotel business) which are valued at over VND 1.6 billion, the input value-added tax amount corresponding to the amount in excess of VND 1.6 billion may not be credited.

c/ The input value-added tax on goods or services used for the production and trading of goods or services not subject to value-added tax may not be credited, except the cases specified at Points d and e of this Clause;

d/ The value-added tax on goods or services purchased by business establishments for the production and trading of goods or services provided to foreign organizations or individuals or international organizations for use as humanitarian aid or non-refundable aid specified in Clause 19, Article 5 of the Law on Value-Added Tax may be wholly credited;

e/ The input value-added tax on goods or services used for prospecting, exploring and developing oil and gas fields may be wholly credited;

f/ The input value-added tax arising in a month shall be declared and credited upon the determination of the payable tax amount of that month. In case a business establishment detects errors in the declared or credited input value-added tax amount, it may make additional declaration and credit within 6 months after detecting errors, excluding errors in the value-added tax amount already paid at the stage of importation and the input value-added tax amount of projects currently at the stage of investment and not yet put into operation, which shall be additionally credited and declared under the law on tax administration.

g/ The input value-added tax on goods and services used for the production and trading of goods or services subject to value-added tax as specified in Clause 2, Article 1 of this Decree may be wholly credited;

h/ Business establishments may account the non-creditable input value-added tax amount as an expense for calculating enterprise income tax or include it in the historical cost of fixed assets;

i/ The Ministry of Finance shall specify cases in which business establishments may declare and credit value-added tax on goods and



services purchased under authorization with invoices bearing the names of authorized organizations and individuals.

2. Conditions for input value-added tax credit:

a/ Having a value-added invoice of purchased goods or services or a document proving the payment of value-added tax on goods at the stage of importation, and a document proving the value-added tax payment in case of service purchase specified in Clause 2, Article 2 of the Government's Decree No. 123/2008/ND-CP of December 8, 2008.

b/ Having a via-bank payment document of purchased goods or services, except goods or services valued at under VND 20 million upon each purchase.

For goods or services purchased by deferred or installment payment, which are valued at VND 20 million or more, business establishments shall, based on goods or service purchase contracts, value-added invoices and via-bank payment documents, declare and credit the input value-added tax. In case of non-availability of via-bank payment documents because the contractual payment time is not due, business establishments may still declare and credit the input value-added tax. As of the contractual payment time, if via-bank payment documents are still unavailable, business establishments may not credit the input value-added tax and shall declare and re-adjust the credited amount of input value-added tax.

For goods or services purchased by clearing between the value of purchased goods or services and the value of sold goods or services, such clearing is also regarded as via-bank payment. After clearing, if the remaining value paid in cash is VND 20 million or more, tax credit is allowed only for cases in which via-bank payment documents are available.

In case goods or services valued at under VND 20 million are purchased from a supplier many times in a day, bringing the total value of purchased goods or services to VND 20 million or more, tax credit is allowed only for cases in which via-bank payment documents are available.

c/ Exported goods and services, apart from the conditions specified at Points a and b of this Clause, must also fully satisfy the following conditions:

- Having a contract on sale or processing of exported goods or entrusted processing of exported goods or a service provision contract signed with an organization or individual overseas or in a non-tariff area;
- Having via-bank payment documents for exported goods or services and other documents under law; or customs declarations, for exported goods.

Payment for exported goods and services made in the form of clearing between exported and imported goods and services, or debt payment on behalf of the State is also regarded as via-bank payment.

The Ministry of Finance shall coordinate with related agencies in guiding dossiers and vouchers in replacement of via-bank documents, in the following cases which are also regarded as via-bank payment: Foreign purchasers become insolvent because of falling into bankruptcy; low-quality exported goods must be destroyed at border gates of importing countries and exported goods are lost or damaged due to objective causes during transportation outside Vietnam for which third parties' certifying documents are required in replacement of via-bank payment documents.”

**16. To amend and supplement Clause 3, Article 10 as follows:**

“3. For operating business establishments paying value-added tax according to the credit method and having investment projects on new production units in provinces or centrally run cities other than those in which they are headquartered, which are under construction and not yet put into operation and registered for business and tax payment, they will be refunded value-added tax on goods or services purchased for such investment if such tax reaches VND 200 million or more. In this case, business establishments shall make separate tax declarations and tax refund dossiers.”

**Article 2.** Implementation provisions

1. This Decree takes effect on March 1, 2012.
2. The Ministry of Finance shall guide the implementation of this Decree.
3. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.-

On behalf of the Government

*Prime Minister*

*NGUYEN TAN DUNG*