

Vietnam News Brief*

An update on the new Value Added Tax (VAT) law in Vietnam

16 January 2009

NEW VALUE ADDED TAX (VAT) CIRCULAR

The Ministry of Finance issued **Circular 129** on 26 December 2008 providing guidelines on the implementation of the new VAT Law effective 1 January. We outline below some of the key changes. Please refer to our earlier Newsbriefs on the VAT Law for more background on this subject.

1. Exported services – some good news!

This has been a contentious area in the past. Whilst exported services have always, in principle, been zero rated, in order to qualify for zero rating it has been necessary to demonstrate that the services are consumed outside of Vietnam. It has not been sufficient therefore for the customer/ payer to be overseas: they have also needed to demonstrate that they use the services outside Vietnam. This has been problematic where the tax authorities have argued that services relating to Vietnam are, almost "de facto", consumed in Vietnam. So many services provided to offshore customers have been 10% rated and this 10% VAT has been an irrecoverable cost.

This treatment is inconsistent with many VAT systems elsewhere, and has made some Vietnam service providers uncompetitive. PwC has lobbied for a more reasonable treatment for many years and some exceptions to the above treatment were obtained.

Under Circular 129, services rendered to foreign companies, including companies in non-tariff areas, will now be zero rated if:

- The foreign company has no permanent establishment (PE) in Vietnam. (PE is not defined and it is assumed that the definition under the domestic CIT regulations will apply in this respect.)
- The foreign company is not a VAT registrant in Vietnam.

Thus the requirement that the services be consumed outside of Vietnam is removed. This will potentially allow a much wide range of exported services to be zero rated.

It should be noted however that there are a number of services specified in the Circular which will not qualify for zero rating, in particular various services provided to non-tariff areas.

2. Tax payers

VAT taxpayers now include organizations/individuals in Vietnam which purchase services from foreign organizations that do not have a permanent establishment in Vietnam, or from individuals that are non-resident in Vietnam. This is consistent with the foreign contractor withholding tax (FCWT) regime whereby the Vietnamese customer has to withhold VAT from payments to foreign contractors.

3. VAT rates and exemptions

Some notable changes are set out in the table below:

Nature of supply	VAT rate	
	Old regulation	Circular 129
Machinery, equipment, construction materials, and specialized transportation vehicles that can not be produced domestically, and which are imported to form fixed assets of the importer	Exempt	10%
International transportation	Exempt	0%
Repair of ships and aircraft provided to foreign companies or individuals (conditions apply)	Exempt	0%
Goods and services provided directly to international transportation	Exempt	Either 0% or 10%
Financial derivatives (noted in VAT circular for the first time)	Not specified	Exempt
Repair of certain machinery, equipment and means of transportation products	5%	10%
Transportation, registration of transportation vehicles	5%	10%
Coal, soil, stone, sand, gravel, basic chemical, and products from metallurgy, rolling and drawing of ferrous, non-ferrous or precious metals	5%	10%
Automatic data processors and parts and accessories	5%	10%
Mechanical engineering products, moulds, explosives, grindstone, artificial plywood, industrial concrete products, tyres, neutral glass tubes.	5%	10%

The above changes will have significant cost implications for affected business, for example:

- the withdrawal of the VAT exemption on imported fixed assets will significantly increase costs for companies making VAT exempt supplies;
- the zero rating of previously exempt supplies will enable input VAT to be recovered, thereby reducing costs.

4. VAT credits/refunds

Input VAT on fixed assets used for both VATable and non-VATable supplies is fully creditable. However, there are some cases where the input VAT is not creditable including certain fixed asset of various businesses making exempt supplies.

The 3 month time limit for claiming input VAT credits is removed. An incorrect input VAT declaration can now be amended within 6 months of the wrong return.

Another notable point is that input VAT corresponding to the value in excess of 1.6 billion VND of certain cars is not now creditable.

One of the new conditions for claiming input VAT is that the payment must be made through the banking system, except for purchases of less than VND20 million. Previously this requirement applied only to exported goods/services.
