

PROFESSIONAL NEWSLETTER OCTOBER 2024

OFFICIAL LETTER FOR GUIDANCE AND RESPONSES

1. General Department of Taxation: Dispatch No. 4640/TCT-CS dated 17 October 2024

Re: Land rent

- Points b, h Clause 1, Article 159, Clause 1, Article 257, Land Law No. 31/2024/QH15 dated 18 January 2024 of the National Assembly stipulates:

“Article 159. Land price list

1. Land price list applies to the following cases:

b) Calculate land rent when the State leases land and collects annual land rent;

h) Calculate land use fees and land rent when the State recognizes land use rights in the form of land allocation with land use fee collection, land lease with one-time land rent collection for the entire lease period for family households, individual;

Article 257. Settlement of land finance and land prices when this Law takes effect

1. The land price list issued by the Provincial People's Committee according to the provisions of Land Law No. 45/2013/QH13 continues to apply until 31 December 2025; In case of necessity, the Provincial People's Committee shall decide to adjust the land price list according to the provisions of this Law to suit the actual situation of land prices in the locality."

- Clause 1, Article 26, Article 30, Clause 10, Article 51 and Clause 1, Article 53, Decree No. 103/2024/ND-CP dated 30 July 2024 of the Government regulating land use fees and land rents stipulates:

“Article 26. Land rental unit price

1. In case of land lease with annual rental payment not through auction:

Annual land rental unit price = Percentage (%) to calculate land rental unit price multiplied by (x) Land price to calculate land rental. In which:

a) The percentage (%) for calculating the unit price of land rent per year is from 0.25% to 3%. Based on local reality, the Provincial People's Committee regulates the percentage (%) to calculate the land rental unit price for each area and route corresponding to each land use purpose after asking for opinions from the People's Council of the same level.

b) The land price to calculate land rent is the land price in the Land Price List (as prescribed in Points b and h, Clause 1, Article 159 of the Land Law); and is determined in VND/square meter (VND/m²).

Article 30, Calculation of land rent

1. In case of land lease with annual land rent payment, the land rent for one year is calculated as follows:

Land rent per
year

=

Area for calculating land rent
as prescribed in Article 24 of
this Decree

x

Annual land rental unit price as
prescribed in Clause 1, Article
26, Clause 1, Point a, Clause 2,
Article 27, Clause 1, Clause 2,
Article 28 of this Decree

...

Article 51. Transitional provisions for land rent collection

10. In case of renting land before the effective date of this Decree and in the period of stabilizing the land rental unit price according to the provisions of the land law before the effective date of the 2024 Land Law, the land rental price will continue to be stabilized until the end of the stabilization period. At the end of the land rent stabilization period, the land rent shall be calculated according to the provisions of Article 30 of this Decree to apply to the next cycle, which will be stable for 05 years, and the end of the land rent stabilization cycle, the land rent adjustment will be applied according to the provisions of Article 32 of this Decree.

Article 53. Effectiveness of implementation

1. This Decree takes effect from 01 August 2024.”

2. Binh Duong Provincial Tax Department: Dispatch No. 25952/CTBDU-TTHT dated 26 September 2024

Re: Tax policies

Pursuant to Clause 5, Article 7, Circular No. 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance stipulates:

“5. For products, goods and services used for promotion according to the provisions of commercial law, the taxable price is determined to be zero (0); In case goods and services are used for promotion but do not comply with the provisions of commercial law, they must be declared, calculated and paid tax like goods and services used for internal consumption, gifts, donations, or offerings.”

- Pursuant to Clause 1, Article 10 of Circular No. 40/2021/TT-BTC dated 01 June 2021 of the Ministry of Finance guiding value added tax, personal income tax and tax management for business households, business individuals, stipulates a number of articles of the Law on Tax Administration:

“Article 10. Tax calculation basis

The basis for tax calculation for business households and individual businesses is taxable revenue and the tax rate calculated on revenue.

1. Taxable income

Income subject to value-added tax and income subject to personal income tax for business households and individual businesses is tax-inclusive revenue (in case of taxable) of all sales income, processing money, commissions, and service provision fees arising in the tax period from activities of producing and trading goods and services, including bonuses, sales support, promotions, and trade discounts, payment discounts, monetary or non-monetary support payments, subsidies, surcharges, and additional fees are entitled to according to regulations; Compensation for breach of contract and other compensation (only included in personal income tax revenue); other revenue that business households and individual businesses are entitled to, regardless of whether money has been collected or not.

3. Binh Phuoc Provincial Tax Department: Dispatch No. 3261/CTBPH-TTHT dated 26 September 2024

Re: Tax policies

Pursuant to Clause 3, Article 16 of Decree No. 132/2020/ND-CP dated 05 November 2020 of the Government (effective from 20 December 2020) regulating tax management for enterprises with associated transactions, stipulated as follows:

“3. Total deductible interest expenses when determining taxable income for corporate income tax for businesses with associated transactions:

a) Total loan interest expenses after deducting deposit interest and loan interest arising during the taxpayer's period are deductible when determining income subject to corporate income tax and does not exceed 30% of total net profit from business activities during the period plus loan interest expenses after deducting deposit interest and loan interest arising during the period plus depreciation expenses arising during the period of the taxpayer;

b) The non-deductible of loan interest expenses according to the provisions of Point a of this Clause shall be carried over to the next tax period when determining the total deductible loan interest expenses in case the total incurred deductible loan interest expenses of the following tax calculation period is lower than the level specified in Point a of this Clause. The period of transfer for loan interest expenses shall be calculated continuously for no more than 05 years following the year in which non-deductible loan interest expenses arise;

...

d) Taxpayers declare the interest expense ratio in the tax period according to Appendix I issued with this Decree.”.

4. Da Nang City Tax Department. Dispatch No. 7485/CTDAN-TTHT dated 12 September 2024

Re: Instructions for allocating deductible input VAT

Pursuant to the provisions in:

+ Clause 2, Article 14, Circular No. 219/2013/TT-BTC dated 31 December 2023, amended by Point a, Clause 9, Article 1, Circular No. 26/2015/TT-BTC dated 27 February 2015 of the Ministry of Finance regulations on the principle of input VAT deduction.

+ Circular No. 80/2021/TT-BTC dated 29 September 2021 of the Ministry of Finance guiding the implementation of a number of articles of the tax management law and Decree No. 126/2020/ND-CP dated 19 October 2020 of the government detailing a number of articles of the tax administration law.

Accordingly, in case the Branch has production and business activities of goods and services subject to VAT and goods and services not subject to VAT, the Branch can only deduct the input VAT amount of the goods and services used for the production and sale of goods and services subject to VAT if they meet the regulated deduction conditions. Branches must separately account for deductible and non-deductible input VAT; In cases where separate accounting is not possible, input tax is deducted based on the ratio (%) between VAT-liable revenue, revenue that is not subject to VAT declaration and payment; and total revenue of goods and services. Sales include revenue that is not required to be declared or taxed and cannot be accounted for separately.

5. Hanoi Tax Department. Dispatch No. 54481/CTHN-TTHT dated 04 October 2024

Re: Tax policy on real estate transfer activities

Pursuant to Clause 1, Article 1 of Decree No. 49/2022/ND-CP dated 29 July 2022 amending and supplementing Clause 3, Article 4 of Decree No. 209/2013/ND-CP dated 18 December 2013 of the Government detailing and guiding the implementation of a number of articles of the Law on Value Added Tax:

“3. For real estate transfer activities, the value-added tax calculation price is the real estate transfer price minus (-) the land price deducted to calculate value-added tax:

a) The land price deductible to calculate value added tax is specified as follows:

...

a.2) In case of auction of land use rights, the land price deducted to calculate value added tax

is the winning land price at the auction.

...

Compensation and site clearance money specified in Point a.1 and Point a.3 of this Clause is the compensation and site clearance amount according to the plan approved by the competent state agency, deducted from the land use fee and land rent must be paid in accordance with the law on collection of land use fees, land rent and water surface rent.

a.4) In case a business establishment receives transfer of land use rights from organizations or individuals, the land price to be deducted to calculate value added tax is the land price at the time of transfer of land use rights not including infrastructure value. Business establishments are allowed to declare and deduct input value-added tax on infrastructure, if any). In case the land price cannot be determined at the time of transfer, the land price to be deducted to calculate value added tax is the land price set by the People's Committee of the province or centrally run city at the time of signing the transfer contract.

In case a business establishment receives real estate transfer from organizations or individuals, the land price including the value of infrastructure has been determined as prescribed in Point a, Clause 3, Article 4 of Decree No. 209/2013/ND-CP (amended and supplemented in Clause 3, Article 3 of Decree No. 12/2015/ND-CP dated 12 February 2015), the land price deducted to calculate value added tax is the land price at the point of transfer not including infrastructure. In case the value of the infrastructure cannot be separated at the time of transfer, the land price deducted to calculate value added tax is the land price prescribed by the People's Committee of the province or centrally run city at the time of signing the transfer contract.

6. Dong Nai Provincial Tax Department. Dispatch No. 5629/CTDON-TTHT dated 15 July 2024

Re: Overpaid personal income tax

Clause 1, Article 60 stipulates the handling of tax amounts, late payment interest, and overpaid fines:

“1. Taxpayers whose amount of tax, late payment interest, or fines paid is greater than the amount of tax, late payment interest, or fines payable will have the tax amount, late payment interest, or overpaid fines offset against the tax amount, late payment interest, outstanding fines or deducted from the tax amount, late payment interest, fines payable in the next tax payment or have the tax amount, late payment interest, overpayment fine refunded when the taxpayer has no more tax debt, late payment interest, fines...”

Article 55 stipulates the tax payment deadline:

“Article 55. Tax payment deadline

1. In case a taxpayer calculates tax, the tax payment deadline is the last day of the tax declaration submission deadline. In case of additional tax declaration dossiers, the tax payment deadline is the tax declaration dossier submission deadline for the tax period containing errors or omissions.

For corporate income tax, temporary payment is quarterly, the deadline for tax payment is the 30th day of the first month of the following quarter...”

Pursuant to Clause 1 and Clause 2, Article 25 of Circular 80/2021/TT-BTC dated 29 September 2021 of the Ministry of Finance regulating the handling of tax amounts, late payment interest, and overpayment fines:

“1. Taxpayers who have overpaid tax amounts, overpaid late payment interest, and overpaid fines (hereinafter referred to as overpayments) according to the provisions of Clause 1, Article 60 of the Law on Tax Administration will be compensated or refunded as follows:

a) Offset the overpayment against the outstanding tax amount, late payment interest, outstanding fines (hereinafter referred to as debt) or deduct from the tax amount, late payment interest, and next arising fines payable (hereinafter referred to as arising revenue) in the following cases:

a.1) Offset against the taxpayer's debt with the same economic content (subsection) and the same budget collection area as the overpayment.

a.2) Offset against the revenue arising from taxpayers with the same economic content (subsection) and the same budget collection area as the overpayment.

a.3) Organizations paying income that have overpaid personal income tax shall make offsets according to the provisions of Points a.1 and a.2 of this Clause. The overpaid personal income tax amount upon finalization is determined to be equal to (=) the overpaid tax amount of the individual authorizing the finalization deduction (-) the remaining tax amount payable of the individual authorizing the finalization; The income paying organization is responsible for paying the authorized individual to finalize the overpaid personal income tax amount when the paying organization finalizes the personal income tax...

2. Order and procedures for clearing tax amounts, late payment interest, and overpaid fines

a) Taxpayers who have overpayments to offset against debts and revenues arising as prescribed in Points a.1, a.2, a.3, Clause 1 of this Article do not have to submit an application to offset the overpayment to tax authorities. The tax authority shall automatically make offsets on the tax management system according to regulations on tax accounting for the cases specified in Points a.1 and a.2, Clause 1 of this Article and provide information to the taxpayer according to the provisions of Article 69 of this Circular....”

7. Binh Duong Provincial Tax Department. Dispatch No. 27659/CTBDU-TTHT dated 22 October 2024

Re: Tax policies

- Pursuant to Clause 1, Article 75 of Enterprise Law No. 59/2020/QH14 dated 17 June 2020 stipulates:

“1. The charter capital of a one-member limited liability company when registering to establish a business is the total value of assets committed to contribute by the company owner and recorded in the company charter.

- Pursuant to Article 8 of Decree No. 70/2014/ND-CP dated 17 July 2014 of the Government regulating the opening and use of direct investment capital accounts:

“1. Residents who are enterprises with foreign direct investment capital and foreign investors participating in business cooperation contracts must open a direct investment capital account in foreign currency at 01 (one) approved credit institution to carry out revenue and expenditure transactions related to direct investment activities in Vietnam.”

- Pursuant to Article 8 of Circular No. 06/2019/TT-NHNN dated 26 June 2019 of the State Bank of Vietnam guiding on foreign exchange management for foreign direct investment activities in Vietnam stipulates:

“Article 8. Money transfer for investment preparation activities

1. Prior to a competent authority granting an Investment Registration Certificate; a Notice of meeting the conditions for capital contribution, share purchase, repurchase of capital contributions from foreign investors; an Establishment and operating license in accordance with specialized laws; or signing a PPP contract, foreign investors are allowed to transfer money from abroad or from the foreign investor's foreign currency or Vietnamese dong payment account opened at an authorized bank in Vietnam to pay eligible expenses during the

period of implementing investment preparation activities in Vietnam.

2. After a competent authority granted an Investment Registration Certificate; a Notice of meeting the conditions for capital contribution, share purchase, repurchase of capital contributions from foreign investors; an Establishment and operating license in accordance with specialized laws; or signed a PPP contract, the amount of money foreign investors have transferred into Vietnam to carry out investment preparation activities is used to:

a) Convert partially or wholly into contributed capital;

...

4. Transactions specified in Clause 1, Clause 2 and Clause 3 of this Article are carried out on the basis of agreement between the parties involved, presenting valid documents and vouchers proving the amount of money transferred to Vietnam and legal costs related to investment preparation activities in Vietnam, ensuring compliance with regulations on foreign exchange management, investment laws, accounting laws and relevant legal regulations.”

Based on the above regulations, the Tax Department responded as follows:

In case before being granted an establishment license, if a foreign investor opens a direct investment capital account in foreign currency at 01 (one) approved credit institution to carry out revenue and expenditure transactions related to direct investment activities in Vietnam in accordance with regulations on foreign exchange management for foreign direct investment activities in Vietnam, the land rental deposit and advance that the foreign investor transfers from the above capital account to the land lessor's account is considered a valid capital contribution of the investor to the Company.

In case a foreign investor transfers money directly from abroad to the land lessor's account to pay the land rental deposit without going through a direct investment capital account opened at 01 (one) approved credit institution, it is not in accordance with regulations and this amount is not considered a valid capital contribution of the investor to the Company.

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