



LEGAL UPDATE

September 2022

Our monthly Legal Update developed by BLG's Team is to provide the summary of key regulatory news that impact your investment and business activities in Vietnam.

The issue of September 2022 concentrates on the new points in regard to value-added tax price calculation in real estate transfer and the value-added tax refund for investment project.

On 29 July 2022, the Government promulgated Decree No. 49/2022/ND-CP on amending and supplementing a number of articles of the Decree No. 209/2013/ND-CP detailing and guiding a number of articles of the Law on Value-Added Tax (VAT), of which several articles were amended and supplemented by Decree No. 12/2012/ND-CP, Decree No. 100/2016/ND-CP and Decree No. 146/2017/ND-CP (*the “Decree No. 49/2022/ND-CP”*).

Below are the two key changes that could be of the interests to you.

A. VALUE-ADDED TAXABLE PRICE CALCULATION IN REAL ESTATE TRANSFER

1. Clearer definition of land compensation and ground clearance payment

It is stipulated that where the State allocates or leases land to a taxpayer for investment in infrastructure and/or construction of houses for sale, the land price deductible for VAT calculation comprises the (i) land use levy/ land rent payable to the State budget and (ii) payment of land compensation and ground clearance.

Previously, under Decree No. 12/2015/ND-CP, it was ambiguous how to determine the deductible land compensation and ground clearance cost, was it based on the actual cost incurred or the amount approved by the competent authorities?

Now, Clause 1 of Article 1 of Decree No. 49/2022/ND-CP has clarified that only land compensation and ground clearance payment **in line with the compensation scheme approved by competent authorities** shall be deductible when calculating value-added taxable price in real-estate transfers.

2. Determination of deductible land price in case the acquisition price is inclusive of the infrastructure value

Clause 1 of Article 1 of Decree No. 49/2022/ND-CP prescribes that the deductible land price for VAT calculation is the land price at the time of acquisition, **exclusive of the infrastructure value**. The business establishments are permitted to declare and credit input VAT on infrastructure (if any).

In case it is **impossible to separate** the infrastructure value from the acquisition price, the land price to be deducted for VAT calculation is the land price prescribed by the provincial-level People’s Committee at the time of signing the acquisition contract. This is the newly added point in Decree No. 49/2022/ND-CP.

B. VALUE-ADDED TAX REFUND FOR INVESTMENT PROJECTS

The regulations in Decree No. 209/2013/ND-CP amended and supplemented by Decree No. 100/2016/ND-CP that only the investment projects implemented for at least 01 year may be eligible for input VAT refund for each year whilst those of conditional business line shall only be eligible for VAT refund when satisfying the business conditions did make it difficult for a lot of projects to get VAT refund, especially the investment projects of conditional business lines during the project implementation because they are not qualified to get relevant licenses.

The new Clause 3 of Article 1 of Decree No. 49/2022/ND-CP is expected to solve the above issue with the emphasized contents as below:

1. Subjects entitled to get VAT refund

Either the entity already registered its business and registered to pay VAT by tax credit method (including one newly established pursuant to an investment project) which has new investment projects (including the investment project of several phases or items) **anywhere in Vietnam** (except for investment project to build houses for sale or not create fixed assets) under the investment stage; **or** the investment project of prospecting, exploration and development of oil and gas fields under the investment stage is able to get VAT refund.

2. Conditions to get VAT refund

The beneficiary mentioned above is required declare VAT separately for each investment project and offset the input VAT amount of the investment project with the payable VAT amount of respective production and business activities carried out (if any). After offsetting, if the accumulated input VAT amount not credited is valued at VND 300 million or more, the business shall be entitled to get VAT refund.

In case where the investment project has been inspected, examined and audited by the competent authority, the tax office may use the inspection, examination and audit results to decide on VAT refund.

3. VAT refund for investment project of conditional business lines

In addition to the general conditions, the investment project of conditional business lines which is under the investment stage shall only be able to get VAT refund in one of the following cases:

- It **has been granted** the business license by the competent authority as prescribed by laws; **or**
- It **has not been yet** required to get the business license as prescribed by laws; **or**
- It **is not required** to get the business license as prescribed by laws.

Decree No. 49/2022/ND-CP takes effect on 12 September 2022 except for the regulations on VAT refund applied to the investment projects of conditional business lines that takes effect on 01 July 2016.

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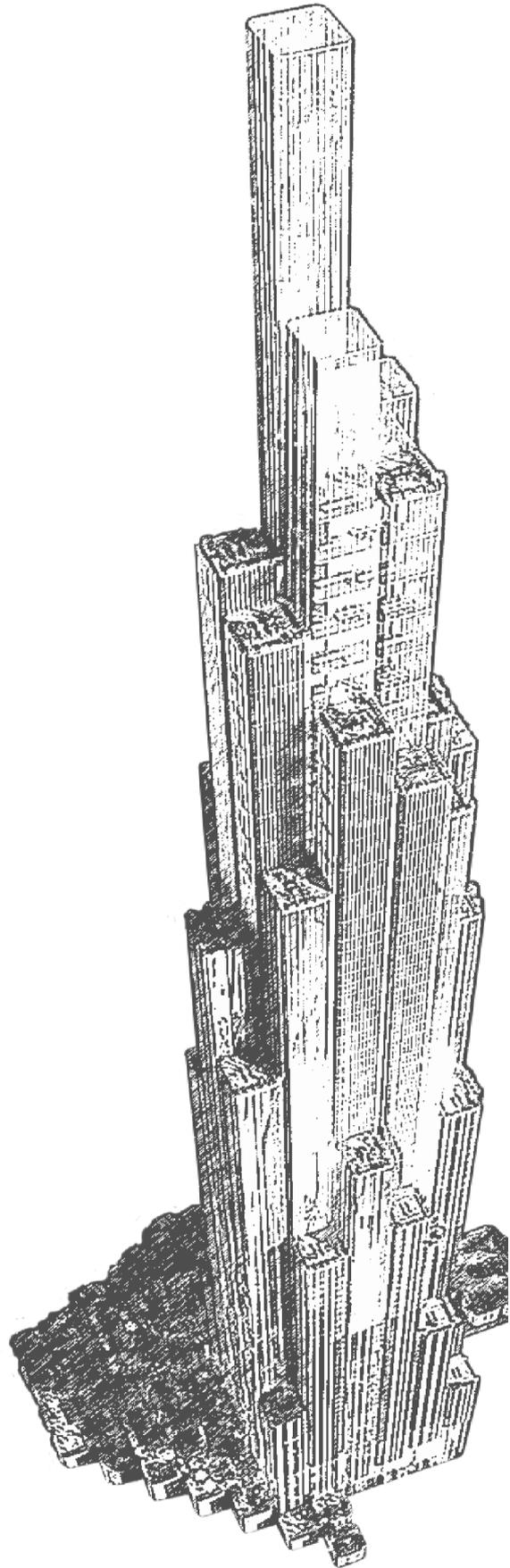
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