

SOME NEW REGULATIONS ON VALUE-ADDED TAX

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On February 28, 2023, Circular 13/2023/TT-BTC (**Circular 13**) was promulgated to guide Decree 49/2022/ND-CP amending Decree 209/2013/ND-CP guiding the Law on Value Added Tax which is amended under Decree 12/2015/ND-CP, Decree 100/2016/ND-CP and Decree 146/2017/ND-CP (**Decree 49**) and to amend Circular 80/2021/TT-BTC. Circular 13/2023/TT-BTC shall take effect from April 14, 2023 with some new points as follows:

Firstly, amending some regulations on Value Added Tax (**VAT**) in Circular 219/2013/TT-BTC amended and supplemented by Circular 26/2015/TT-BTC, Circular 130/2016/TT-BTC (**Circular 219**). Because Decree 49 amends a number of main contents in Decree 209/2013/ND-CP (which is one of the legal bases for promulgating Circular 219) such as (i) the land price permitted to be deducted for VAT calculation in real estate transfer; (ii) the VAT refund for investment projects, in order to ensure the consistency between relevant applicable regulations in Circular 219/2013/TT-BTC, Circular 13/2023/TT-BTC amends these regulations towards referring to the corresponding regulations in Decree 49, accordingly:

(i) Regarding land price permitted to be deducted for VAT calculation in real estate transfer: Circular 13 stipulates that the tax calculation shall comply with the provisions of clause 1, Article 1, Decree 49. Detailedly, Decree 49 regulates that in the case where business establishments acquire land use rights from organizations or individuals, the land price permitted to be deducted for VAT calculation is the land price at the time of transfer, exclusive of the infrastructure value. Business establishments may declare and credit the input VAT on infrastructure (if any). If it is impossible to separate the infrastructure value at the time of transfer, the land price to be deducted for VAT calculation will be the land price set by the provincial People's Committee at the time of signing the transfer contract. Decree 49 also better clarifies the expenses for compensation and ground clearance in the land price permitted to be deducted for VAT calculation. Accordingly, expenses for compensation and ground clearance are the compensation and ground clearance payment



according to the plan approved by the competent State agencies, and shall be deducted from the land use levy and land rental payable as prescribed in the regulations on collection of land use levy, land rental and water surface rental.

(ii) Regarding the VAT refund for investment projects: Circular 13 stipulates that the VAT refund shall comply with clause 3, Article 1, Decree 49. Accordingly, Decree 49 has amended and supplemented the regulations on VAT refund for investment projects in general and investment projects with conditional business lines in particular. Regarding the VAT refund for investment projects in general, the notable amendment is that Decree 49 permits VAT refund for business establishments which register to pay VAT by tax credit method and have new investment projects divided into many investment stages or investment items with at least 300 million Viet Nam Dong of input VAT amount of goods and services arising in the accumulated investment stage, which have not yet been deducted in full. Moreover, the Decree also abolishes the regulation of no VAT refund permitted for investment period of less than 1 year and allows business establishments to get VAT refund for projects located in areas other than the province or city where their headquarters is located.

In addition, regarding the VAT refund application documents for investment projects currently prescribed in Circular 80, besides referring to regulations of Decree 49, Circular 13 revises the component of the application documents towards only submitting a copy of "either the License, the certificate, or the written confirmation/approval of engagement in conditional business lines" instead of all 3 documents according to the applicable regulations.

Secondly, guiding in detail the adjustment of VAT, late payment amount, and fines for tax administrative violations (if any) in the event that business establishment is subject to the application of the above-mentioned amounts when there is an adjustment in the regulations on VAT refund for investment projects specified in Decree 49, including:

(i) In the case that the tax authority has issued a decision to recover the amount of tax refund, late payment amount and fines for tax administrative violations, the tax authority shall issue a decision on adjustment thereof (according to Form No. 38 issued together with Decree 118). If the business establishment has additionally declared the recovered VAT refund, the business establishment and the tax authority shall explain and supplement information, documents (according to Form No. 02/KTT issued together with Circular 80) to adjust the amount of the recovered VAT refund, late payment amount.

(ii) The amount of the recovered VAT refund (including the case where the establishment has not yet cleared the amount of the recovered VAT refund against the payable VAT amount incurring from its business and production operations, and the case where the establishment has cleared the same), the late payment amount, and fines for tax administrative violations (if any) already paid into the state budget before the date of effectiveness of Circular 13 shall be handled in accordance with the provisions of Article 25 and Section 2, Chapter V of Circular 80.

COMMENTS AND RECOMMENDATIONS

The effectiveness of Decree 49 has led to many changes related to VAT policy, thus confirming the necessity in promulgation of Circular 13 to ensure the uniformity and consistency in the implementation of VAT policy. Concurrently, the amendments and supplements of Circular 13 are aimed to reduce compliance costs for businesses (for example, simplifying the component of VAT refund application documents). Enterprises need to update and study the provisions of Circular 13 in the case of acquiring land use rights or implementing investment projects to ensure compliance with the law.