

NOTABLE CONTENTS OF THE DRAFT DECREE AMENDING AND SUPPLEMENTING DECREES ON COLLECTION OF LAND USE LEVY, LAND AND WATER SURFACE RENT

TUE DANG

On the basis of Clause 2, Article 107 of Land Law 2013, the Government has issued a number of decrees detailing the collection of land use levy, land and water surface rent such as Decree 45/2014/ND-CP regulating the collection of land use levy (**Decree 45**), Decree 46/2014/ND-CP regulating the collection of land and water surface rent (**Decree 46**). Currently, the Ministry of Finance is developing a draft Decree amending and supplementing the Decrees on collection of land use levy, land and water surface rent (**Draft Decree**) to (i) resolve some difficulties and obstacles in the actual process of collecting land use levy/land rents, and (ii) ensure effective exploitation, utilization of land resources and effective mobilization of revenue from land for the state budget. Below are some notable contents of the Draft Decree:

Abrogating the regulation on no exempt or reduction of land use levy in case of land use right auctions: Currently, Decree 45 stipulates that *land use levy exemption or reduction is not applied in the case of land use right auctions* to allocate land with collection of land use levy to the auction winner eligible for land use levy exemption or reduction. However, in practice, some opines that both cases, auction and non-auction of land use rights, can include the subject of land use levy exemption or reduction. Therefore, the regulation that land use levy is not exempted or reduced in case of auctions leads to an unfair situation between auction and non-auction of land use rights. As such, if the Draft Decree *abrogates this regulation* of Decree 45 in effect, this will be an opportunity for investors of projects that have to go through an auction of land use rights to be considered for exemption or reduction of land use levy.



Supplementing the mechanism of inspection by state agencies upon a decision on land use levy exemption or reduction: Decree 45 has not yet addressed the handling of cases where state agencies inspect and detect the land users fail to meet the conditions for land use levy exemption or reduction, while this inspection mechanism has been prescribed for *land rent exemption or reduction* in Circular 77/2014/TT-BTC. Accordingly, the Draft Decree supplements the regulations on handling the case in which land users have been exempted or reduced from land use levy, *but are found not to meet the conditions for land use levy exemption or reduction* upon inspection by the competent authorities:

- In the event that the land user is an economic organization, *the land use levy shall be re-determined according to the policy and land price at the time the competent authority issues a written determination* of the economic organization's failure to satisfy the conditions for land use levy exemption or reduction. If the economic organization is eligible for a reduction in land use levy and has already paid the land use levy, *the paid amount shall be deducted from the land use levy to be re-determined*.
- In the event that the land user is a household or an individual, the Draft Decree is proposing two options for the Government: Option 1 is similar to the above-mentioned case of economic organization. Meanwhile, Option 2 stipulates that (i) households and individuals must return the exempted or reduced amounts to the state budget, (ii) if the exempted or reduced amount is not determined in accordance with the law on collection of land use levy at the time of exemption or reduction, *it must be re-calculated*.

under the laws on orders and procedures for determining payable land use levy. In addition, households and individuals must *pay an additional amount equivalent to the late payment of land use levy for the period that has been exempted or reduced.*

Supplementing regulations on handling late payment of land use levy in case there is a written cancellation of the decision recognizing the auction winner: Previously, Decree 45 stipulates that land users who fail to fully pay the land use levy according to the payment notice must pay late payment interest for the outstanding amount at the rate prescribed by the Law on Tax Administration and its guiding documents. Similarly, the Draft Decree also requires to calculate the late payment interest based on the rate prescribed by the laws on tax administration. However, for the late payment of land use levy by the auction winner, the Draft Decree further regulates that the auction winner must pay the interest calculated based on the late payment of the land use levy in accordance with tax administration laws *from the time they are supposed to pay the levy but fail to do until the time when they actually make the payment or the time when the competent authority issues a written cancellation of the decision recognizing the auction winner.* The land use levy corresponding to the deposit amount already paid will not be refunded to this entity (partially or fully). This provision aims to ensure a stricter mechanism for handling auction winners that do not pay the land use levy in full and on time as prescribed by law.

Re-determining land use levy/land rent payable in case of change of some land-related factors: Currently, Decree 45 and Decree 46 provide for the re-determination of land use levy/land rent payable when *the basis for calculating land use levy/land rent changes*. However, the Draft Decree amends and supplements that land users who are allowed to adjust the detailed project planning by the competent state agency must re-determine the land use levy/land rent if such adjustment of detailed project planning changes one or some or all of the following elements: (i) land use structure, (ii) location of each land type, (iii) density, (iv) land use coefficient, or (v) height of work. This provision may arise from the practical cases where the state authorities adjust the detailed project planning *without* changing the basis for calculating land use levy/land rent, *but* changes other land-related

factors such as land use coefficient (density, height of work).

Extending the time limit for submitting applications for land rent exemption: This regulation relates to some public non-business organizations that are allocated with land by the State without land use levy before July 1, 2014 and must switch to renting land under Land Law 2013 from July 1, 2014 with exempt or reduction of land rent. In practice, these organizations delay in submitting applications for land rent exemption or reduction due to several reasons, leading to required payment of land rent instead of being exempted, and facing difficulties in awaiting for the state to allocate the budget for land rent payment. Therefore, some proposals to extend the deadline for submitting applications for land rent exemption until December 31, 2024 have been made. The Draft Decree allows public non-business organizations to be exempt from land rent if they submit the application for land rent exemption before January 1, 2024. If they submit the application on or after January 1, 2024, their land rent will only be exempted for the remaining incentive period.

Compared to the applicable Decrees detailing the collection of land use levy, land and water surface rent, the Draft Decree's amendments and supplements are favorable for land users (such as the abrogation of regulations on not exempting or reducing land use levy in the case of land use right auctions, extension of the deadline for submitting applications for land rent exemption) but at the same time, provide a stricter management mechanism (namely the addition of regulations on handling late payment of land use levy, inspection mechanism by state authorities upon decision on land use levy exemption or reduction). Besides, the amendment and supplementation of regulations on collection of land use levy and land rent in the Draft also aim to be consistent with other legal provisions, such as the regulations on tax administration.

Enterprises should study the contents and follow the finalization of the Draft Decree to promptly update its amendments and supplements once this Draft Decree is promulgated and takes effect.