

NOTABLE CONTENTS ON VALUE-ADDED TAX

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On July 29, 2022, the Government issued Decree 49/2022/ND-CP amending Decree 209/2013/ND-CP guiding the Law on Value-Added Tax, which was amended and supplemented by Decree 12/2015/ND-CP, Decree 100/2016/ND-CP and Decree 146/2017/ND-CP (**Decree 49**). The document will take effect from September 12, 2022 and has some typical contents as follows:

Firstly, amending regulations on determining land price permitted to be deducted for value-added tax (VAT) calculation in real estate transfer. Specifically, Decree 49 supplements regulations on 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. Also, under Decree 49, in the case that 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. However, business establishments may declare and credit the input VAT on the 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 is the land price set by the People's Committee of provinces or centrally-run cities at the time of signing the transfer contract.

Secondly, amending and supplementing the cases of investment projects eligible for VAT refund. Accordingly, 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, this

document 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.

For investment projects of business establishments engaged in conditional business lines, Decree 49 supplements 03 cases eligible for VAT refund, including:

- (i) Investment projects in the investment stage that the business establishment is granted with a business license for conditional business lines by competent State agency in accordance with investment law and specialized law;
- (ii) Investment projects in the investment stage that the business establishment has not yet been required to apply for a business license for conditional business lines in accordance with investment law and specialized law; and
- (iii) Investment projects which are not required to have a business license for conditional business lines in accordance with investment law and specialized law.

Thirdly, allowing to apply VAT refund for investment projects of business establishments with conditional business lines under this Decree from the effective date of Decree 100/2016/ND-CP (July 1, 2016). Accordingly, in the case that business establishments with conditional business lines have been refunded VAT in the investment stage by tax authorities without having to apply for or a certificate of business condition satisfaction as prescribed by investment law and specialized law, these tax refund amounts will not be recovered; in the case that tax refunds have been recovered, they shall be handled according to tax administration regulations on handling overpaid money.



Comments and recommendations

Decree 49 is issued to solve the problems arising in the implementation of Decree 209/2013/ND-CP due to the lack of specific regulations, leading to different interpretations in practice. Decree 49 creates more favorable conditions for businesses in declaring and paying VAT, specifically determining the taxable price to pay VAT in real estate transfer activities and supplementing tax refund cases to help businesses reduce costs in their production and business. Therefore, businesses need to research and have plan to apply these new regulations to ensure their maximum rights and interests.