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1. Tight supervision of reduction of bank interest rate in Vietnam Dong

The State Bank of Vietnam (SBV) recently issued Official Letter No. 5065/NHNN-CSTT requesting commercial banks and SBV branches in provinces and cities to comply with the arrangement on reduction of borrowing interest rate in Vietnam Dong.



Accordingly, the State Bank requests the General Directors of commercial banks to comply with the arrangement among the members of the Vietnam Banking Association on reduction of capital borrowing interest rate in Vietnam Dong. Directors of the branches of the State Bank of Vietnam in provinces and cities shall be responsible for inspecting and supervising implementation of the reduction of borrowing interest rate in Vietnam Dong by commercial banks (branches) in their areas in accordance with the arrangement among the members of the Vietnam Banking Association; immediately applying necessary measures under their authority to deal with the General Directors of commercial banks and Directors of branches of commercial banks violating the arrangement on interest rate and opportunely reporting the results thereof to the Governor of SBV.

In order to reach the borrowing interest rate of 10%/year as set out by the Government, the commercial banks also agree that, in August 2010, the borrowing interest rate will be reduced to 10.5%/year; and efforts will be made so that in September 2010, the borrowing interest rate will be reduced to 10.0%/year.

2. Six fields of science and technology with incentives for cooperation in investment with foreign partners

From September 1, 2010, Decree No. 80/2010/ND-CP providing for cooperation in investment with foreign partners in science and technology fields will become enforceable.



According to the Decree, cooperation with foreign partners in science and technology shall be in various forms such as Aid, sponsorship, donation (collectively, funding) for operation in science and technology; Science and Technology Agreements; Affiliation and participation in science and technology operations with foreign partners. Cooperation with foreign partners in science and technology must be made in contracts or agreements for cooperation.

Six fields with incentives for cooperation in investment with foreign partners include: Basic research in natural sciences; Applied research and development of information technology, biotechnology, new materials, automation and electromechanics, atomic energy and new forms of energy, space technology, mechanical engineering, farm produce and food preservation and processing, waste treatment technology; Hi-tech human resources training and development; Development of hi-tech enterprises in Vietnam; Technology transfer and science and technology services; Establishment or contribution to development of science and technology development funds in Vietnam.

Foreign-invested science and technology organizations are only permitted to operate in science and technology fields in Vietnam after having registered operations and obtained from competent State authorities Certificates of Registered Operation and paid fees and charges as stipulated.

3. Refund by 90% of VAT on export goods without payment evidence

The Ministry of Finance recently issued Circular No. 94/2010/TT-BTC stipulating that export goods without payment evidence shall enjoy refund of input VAT by 90%.



Specifically, an enterprise with export goods currently in the stage of pending payments from the foreign party shall enjoy temporary refund of a VAT amount equal to 90% of the input VAT amount and a further refund of 10% VAT within not more than 4 working days of obtaining sufficient documents and evidence.

The following cases shall not apply the temporary refund of taxes above and must be inspected before refund of taxes: According to the provisions of international treaties to which Vietnam is a member and which provide for inspection prior to refund of taxes; Taxpayers receiving tax refund for the first time, except for export goods manufacturing and processing enterprises having their manufacturing facilities located in the places of tax refund and enjoying temporary refund of VAT; Taxpayers having evaded taxes for 2 years backwards; merged, consolidated, split, dissolved, bankrupt, ownership-converted, closed-down enterprises; handover, sale, hire, lease of State-owned enterprises with incompletely deducted input VAT or overpaid VAT upon tax finalization; Taxpayers failing to make explanation or provide additional tax refund documents as required by the tax authority upon expiry of the explanation period.

VAT refund dossiers without payment evidence submitted to the tax authority before August 14, 2010 if considered for resolution by the tax authority after August 14, 2010 shall be handled in accordance with this Circular.

4. Recognition of housing ownership without condition on permanent residence address

This is one of the various provisions set out in Decree No. 71/2010/ND-CP dated June 23, 2010 of the Government making detailed provisions and guidelines on implementation of the Law on Residential Housing.

Accordingly, organizations and individuals falling within the category of subjects having the right to own houses in Vietnam and documents evidencing their lawful creation of the houses (investment in new construction, purchase, receipt as gift, receipt as heritage, etc.) will obtain recognition by the State of their ownership of such housing without having to satisfy the condition on permanent residence address or business registration address at the place where the houses are located, except for purchase or hire purchase of social housing.

In the case where households or individuals creating their houses through receipt of assignment of agreements on purchase and sale of housing to be formed in the future in housing development projects before the date of effectiveness of this Decree, the recognition of ownership of such houses shall be realized in accordance with the guidelines of the Ministry of Construction.

Competent State authorities shall realize the recognition of ownership of housing through issuance of certificates of land use right, ownership of housing and other properties attached to land to the owner as stipulated by the laws.

Also according to this Decree, Vietnamese people with permanent residence abroad shall be entitled to own houses in Vietnam if falling within the category of subjects and being qualified as stipulated in Article 1 of the Law No. 34/2009/QH12 on amendment of and addition to Article 126 of the Law on Residential Housing and Article 121 of the Law on Land. The term of ownership of housing by Vietnamese people with permanent residence abroad is stable and permanent.

Foreign organizations and individuals, upon investment in construction of residential housing in Vietnam in accordance with the laws on investment, are entitled to own residential housing in accordance with the Law on Residential Housing; in case of purchase of residential housing in Vietnam, they are entitled to own residential housing in accordance with Resolution No. 19/2008/QH12 dated June 3, 2008 of the National Assembly on pilot permission for purchase and ownership of residential housing by foreign organizations and individuals in Vietnam.

This Decree is effective as of August 8, 2010 and supersedes Decree No. 90/2006/ND-CP dated September 6, 2006 of the Government making detailed provisions and guidelines on implementation of the Law on Residential Housing.

5. Guidelines on the procedures for renewal of the term of payment of taxes and refund of VAT on special-use means of transport

The Ministry of Finance recently issued Circular No. 92/2010/TT-BTC (dated June 17, 2010) providing guidelines on the procedures for renewal of the term of payment of taxes and refund of Value Added Tax on special-use machinery, equipment and means of transport falling within the category of technological production lines and building materials which domestic manufacturers have not been able to manufacture and which need to be imported for creation of fixed assets for enterprises.

Accordingly, business establishments newly set up from investment projects which are currently in the investment stage but not yet put into operation and business establishments currently operative and having investment projects (construction of new production lines, expansion of business, technology innovation, ecological environment improvement, enhancement of production capacity) and importing special-use machinery, equipment and means of transport falling within the category of technological production lines and building materials which domestic manufacturers have not been able to manufacture and which need to be imported for creation of fixed assets are entitled to elect to apply renewal of the term of payment of VAT on imports and refund of VAT.

Specifically, business establishments paying taxes by the deduction method and having obtained business registration certificates or investment certificates, investment licenses (work permits); having a seal as stipulated by the laws, keeping accounting books and documents in accordance with the laws on accounting; having deposit accounts with banks under the tax code of the business establishments; having technological production lines and building materials which domestic manufacturers have not been able to manufacture and which need to be imported for creation of fixed assets at a total value of VND200 billion or more. Investment projects for production and trade of goods and services subject to VAT or projects for production and trade of goods and services both subject to VAT and not subject to VAT.

Renewal of the term of payment of taxes applies from the first lot of imported goods arriving at the port and which is worth less than VND200 billion. Goods are cleared right upon completion of field inspection by the customs office. Renewal of the term of payment of taxes and clearance of goods do not depend on the situation of liabilities of import duties and do not require guarantee from credit institutions.

A dossier for renewal of the term of payment of taxes includes a written request for renewal of the term of payment of VAT, tax declaration documents of the tax amount for which the renewal is applied (1 photocopy), the Agreement on purchase of imported goods for which the renewal of the term of payment of VAT is requested; in case there are many agreements, all the agreements (1 photocopy) and the Written Approval of the project or the investment plan shall be submitted. When the dossier for renewal has been sufficient, accurate and for the right subject as stipulated, the customs office will notify the taxpayer in writing of its consent on renewal within 3 (three) working days from the date of receipt of a sufficient dossier.

For refund of VAT, the tax authority is responsible for checking and comparison of evidence of tax payments against the figures declared in the tax refund dossier of the business establishments and making a decision on tax refund within 3 (three) working days from the date of receipt of evidence of payment of VAT on imported goods.

Legal Advice

QUESTIONS:

Is it possible for us to extent the land lease term from 50 years to 70 years?

Land use rights (LURs) can be granted on a “long-term” (freehold) basis or for a limited term.

“Long-term use” is only granted to a number of very limited purposes such as for residential, personal use, for households and individuals that have already been granted long-term LURs to use for the family’s production, business purposes, for national security purpose, etc.

The term for land leased by foreign land users for implementation of investment projects in Vietnam shall be 50 years. As for large projects in localities of difficult socio-economic conditions which need more time to make a return on their investment, the lease term may increase to a maximum of 70 years. In practice, up until recently, no foreign invested projects have received a 70-year lease.

Except for 70 year leases with lump-sum payment under Decree 84 as mentioned below, extension or renewal of the LURs is not automatic. No later than 6 months prior to the expiry of the term of the LURs, the land user must carry out formalities to obtain approval to extend the term.

As you may be aware, Decree No. 84/2007/ND-CP of the Government (“**Decree 84**”) allows foreign residential developers for sale and lease are entitled to 70-year term of land use with multiple extensions. Decree 84 also sets out a mechanism for land rental payment. Accordingly, if a foreign developer is licensed to carry out residential properties for sale, it must pay land rental in one lump sum. Land rental in such a case may be paid in one of two ways at the developers’ option:

Option 1:

Land rental may be paid equal to the land use fee payable when land is allocated with the payment of a land use fee for residential purposes or the winning auction price (i.e. market price); or

Option 2:

Land rental may be paid equal to “usual” land rental (0.5%-2% of Government land price list). Then in order to give buyers long-term use in this case, developer must pay land use fee – land rental (in respect of villas: at the time they are sold; in respect of condos: at the time project is completed).

Under Decree 84, foreign invested joint ventures enterprises (JVs) and wholly foreign owned enterprises (WFOEs) may purchase projects from domestic organisations. Types of projects permitted to be sold to JVs and WFOEs:

1. Projects to build infrastructure in industrial zones, export processing zones, industrial complexes and other centralised business zones with the same regime of land use;

2. Investment projects in an economic zones or high-tech zones;
3. Investment projects for building of infrastructure for urban areas and rural residential zones;
4. Projects for production and business; and
5. Investment projects for construction and sale of residential houses which have completed investment in the construction of common infrastructures for the projects.

If seller has paid for the land with its own funds, then land price paid may be included in sale price of the project; the buyer must lease land from the State but does not have to pay land rental.

If seller has paid for the land with State funds, land price may not be included in the sale price and the buyer must lease land from the State and may pay rental annually or in one lump sum.

In these circumstances, land use term is as follows:

1. If original land use was for a limited term, the land use term after assignment of projects is the remaining term; and
2. If original land use was “long-term” use, the land use term is 70 years from the date of the assignment agreement (with multiple extensions of 70 years each time without further payment).

If the buyer of the project takes over a residential project from a local developer that has paid the land use fee with its own funds, then the buyer does not have to make further payment and end-buyers also do not have to make any payment to have the “long-term” use of land.

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