

### Value added tax on real estate transfer



#### Introduction

On 22 July 2009, the Ministry of Finance (“MoF”) issued **Official letter No. 10383/BTC–TCT** (“OL 10383”), addressed to **all** provincial tax departments, guiding the calculation of Value Added Tax (“VAT”) taxable price from real estate transfer activities **from** 1 January 2009.

#### Content

Under the current Law, Decree and Circular on VAT, the VAT-taxable value is determined as the total transfer price of real estate minus the **agreed land price**. The agreed land price must be stated in the sale contract signed with buyers and reflected on VAT invoices issued by the sellers. OL 10383 allows the sellers and the buyers, **prior to any tax audits**, to sign contract appendices and the sellers to re-issue VAT invoices in case the contracts and invoices do **not** contain the split of construction work or infrastructure price from land price. However, the OL is silent on what will be the VAT implications if there is **no** split at all. Based on the general scheme of the VAT regulations, in our opinion, in such cases, VAT of 10% may apply on the full transfer price **without** any deduction for the land price.

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Though OL 10383 suggests the sellers to refer to third parties being professional valuers or to prices listed on real estate trading floors/centers to determine the reasonable actual land price it does not really shed more light on the provisions of Circular 129/2008/TT-BTC in terms of which are the cases the tax authorities will assess that the agreed land price is unreasonable and deem the VAT exempt portion being the land price stimulated by the provincial People’s Committee at the point of transfer. Thus, in our view, the prices stimulated by the provincial People’s Committee are still one of the important benchmarks that real estate developers may take into account when determining the contractual land prices.

An inconsistency exists between the guidance of OL 10383 and OL 6992/BTC-TCT (“OL 6992”) issued on 18 May 2009 and both OLs are addressed to all provincial tax departments. The main purpose of OL 6992 is to provide guidance on VAT implications of deposits received from clients of developers of residential real estate but it also deals with VAT taxable price. OL 6992 defines VAT taxable price of real estate transfer as difference between the transfer price and the land use fee or land price promulgated by provincial People’s Committees or land auction price. Unfortunately, OL 10383, though issued at a later date, does not override the provision on VAT taxable price of real estate transfer of OL 6992, which may create confusion for both tax payers and local tax authorities in implementing these two OLs. In our opinion, however, the guidance of OL 10383 seems to more closely follow the letter and spirit of the current Law and regulations on VAT.

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