

### Deloitte Vietnam

#### Contacts:

**Richard Buchanan**  
Tax Partner  
rhubuchanan@deloitte.com  
Tel: +84 8 3910 5267

**Thomas McClelland**  
Tax Partner  
tmcclelland@deloitte.com  
Tel: +84 8 3911 0727

**Tuan Bui**  
Tax Director  
tbui@deloitte.com  
Tel: +84 8 3910 0751

**Nhung Chu**  
Tax Manager  
nhchu@deloitte.com  
Tel: +84 4 3577 2530

## New guidance on Clients' Transfer of Capital Contribution Contracts for purchasing real property

### Introduction

On 02 August 2010, the General Department of Taxation issued Official Letter 2846/TCT-CS ("OL 2846") to **all** provincial tax departments pertaining to the settlement of Value Added Tax ("VAT") invoice issuance and other tax issues upon clients' transfer of capital contribution contracts for purchasing real property.

This guidance has been awaited for a long time by real estate companies, especially those which are engaged in selling residential houses and apartments. In our view, however, the guidance has not yet clearly answered all their questions and there are still legal and tax implications that real estate companies may need to seek clarification on.

### Past approach – Cancellation of VAT Invoices and Issuance of New VAT Invoices

Under the prevailing laws on VAT, a company conducting real estate business is required to **issue VAT invoices upon collecting payments** in accordance with the schedule of project implementation/ payments stated in a sale contract. This rule is also applicable to the case of collecting payments following the schedule of capital contribution contracts for purchasing real property.

With this rule, in practice, real estate companies face confusion in dealing with VAT issuance when the first client (the transferor) transfers his rights/obligations under a capital contribution contract/ sale contract to another one (the transferee). As a full set of VAT invoices are usually required for the latter to register ownership of the real property, without clear guidance from the tax authorities, many real estate companies choose to cancel all VAT invoices issued to the former client and reissue those invoices to the latter. This approach has also been accepted under a tax ruling issued by the Tax Department of Ho Chi Minh City.

### New Approach – No Cancellation of VAT Invoices

Under OL 2846, real estate companies are not required to cancel invoices issued to the transferor and reissue invoices to the transferee.

In case the transferor is a company, then the transferor should directly issue VAT invoices to the transferee for the amount the transferor already paid to the real estate company. Real estate developers will continue issuing VAT invoices to transferee upon collecting new payments.

In case the transferor is an individual, then it is unclear to us how the transferee will have VAT invoices for the total contract value without the real estate company canceling old VAT invoices and issuing new ones.

## Other Tax Issues

According to OL 2846, transferors being companies are liable for Corporate Income Tax (“CIT”) and VAT for any income from assignment of capital contribution contracts for purchasing real estate property.

In addition, OL 2846 also restates that in case the transferor is an individual, it is the individual’s responsibility to fulfill PIT obligations in transfer of capital contribution contracts from purchasing real property. It is, however, unclear what should be the real estate companies’ responsibility in this PIT payment process.

This **Alert** is published for the clients and professionals of the Deloitte - Vietnam offices. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact us.

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