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TAX NEWSLETTER

For enterprises in the Real Estate sector

Quarter 3/2024



INTRODUCTION

Dear Valued Clients and Business Partners,

In a landscape of constantly evolving tax Laws and policies tax-payers need timely notification of changes to regulations, and concise in-depth guidance from subject matter experts, on how the regulatory changes impact their business operations.

Deloitte Vietnam, as a leading real estate advisor, recognizes businesses needs, and is proud to introduce our **Tax Newsletter for enterprises in the Real Estate sector.**

This quarterly Tax Newsletter captures the publication of Laws, legal regulations, the latest legal documents and other tax guidance from Tax authorities, that impact the Real Estate sector.

Through this publication our Valued Clients and Business Partners will be better able to manage tax liabilities, enhance tax compliance and boost operational efficiency on their path to sustainable business growth.

Deloitte Vietnam has been recognized, for many consecutive years, as being one of the Top 10 best real estate advisers - by offering comprehensive tax consulting services, promoting compliance and sustainable development, while supporting clients in effective tax management to achieve their business goals.

Deloitte Vietnam is always honored to accompany our esteemed clients and partners!



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Highlighted Official Letters

• TAX ADMINISTRATION

- ✓ Official Letter No. 15519/CTHN-TTHT dated 27 March 2024 issued by the Hanoi Tax Department

• CORPORATE INCOME TAX

- ✓ Official Letter No. 3487/CTTPHCM-TTHT dated 09 April 2024 issued by the Ho Chi Minh City Tax Department
- ✓ Official Letter No. 7213/CTTPHCM-TTHT dated 09 June 2023 issued by the Ho Chi Minh City Tax Department
- ✓ Official Letter No. 4849/CTDAN-TTHT dated 31 May 2024 issued by the Da Nang City Tax Department
- ✓ Official Letter No. 3457/CTDAN-TTHT dated 08 April 2024 issued by the Da Nang City Tax Department

• PERSONAL INCOME TAX

- ✓ Official Letter No. 2509/TCT-DNNCN dated 12 June 2024 issued by the General Department of Taxation
- ✓ Official Letter No. 1504/TCT-DNNCN dated 11 April 2024 issued by the General Department of Taxation



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The National Assembly approves the amendment and supplement the contents of Land Law, Housing Law and Real Estate Business Law

Legal documents

On June 29, 2024, the National Assembly promulgated Law No. 43/2024/QH15 amending and supplementing a number of articles of the Land Law No. 31/2024/QH15, the Housing Law No. 27/2023/QH15, the Real Estate Business Law No. 29/2023/QH15 and the Law on Credit Institutions No. 32/2024/QH15, effective from August 1, 2024 (hereinafter referred to as "Law 43/2024"). Accordingly, Clause 1, Article 252 of the Land Law No. 31/2024/QH15 (regulating the effective date of the Land Law) is amended and supplemented. Specifically, Land Law No. 31/2024/QH15 will take effect on 01 July 2024, instead of 01 January 2025, as initially stipulated in the Land Law.

With the current legislative proposals related to the real estate sector, businesses should pay attention to the following points:

Land Law No. 31/2024/QH15	Law on Real Estate Business No. 29/2023/QH15	Law on Housing No. 27/2023/QH15
<p>Land without certificate before 01 July 2014 is now granted a Certificates of Land Use Right</p> <p>Clause 3, Article 138 of the Land Law 2024 stipulates that households and individuals using land from 15 October 1993 to before 01 July 2014 without land use right certificate now will be granted a land use right certificate if they meet the following conditions:</p> <ul style="list-style-type: none"> ✓ Not violating the Land Law; ✓ The land allocation complied fully with its authorized use guidelines; ✓ It is confirmed by the commune-level People's Committee where the land is located that there is no dispute. 	<p>Deposit for purchasing future housing should not exceed 5% of the sale price.</p> <p>Current regulations do not specify the deposit amount for purchasing or leasing future real estate properties.</p> <p>Clause 5, Article 23 in the new Laws regulates that: <i>"5. The Real Estate project investor may receive deposit for the housing or building or its floor area which has met relevant conditions for putting on the market as set out in this Law from the buyer or tenant-buyer provided that the received deposit shall not exceed 5% of the selling price or lease purchase price."</i></p> <p>Payment in Real Estate Business</p> <p>Article 48 stipulates that investors when receiving payments under real estate business contracts and real estate services from customers must be through accounts opened at domestic credit institutions or legally operating foreign bank branches in Vietnam.</p> <p>Thus, when the New Laws comes into effect, project investors receiving payments from customers must comply with the payment method in accordance with regulations.</p>	<p>Incentives for investors of social housing projects</p> <p>The Law on Housing 2014 stipulates that investors are exempt from land use levies and land rents for land areas allocated or leased by the State for investment in the construction of social housing. However, in fact, some investors need to wait for the procedures for determining land prices, calculating land use levies, and land rents before carrying out exemption procedures.</p> <p>For the Law on Housing 2023, Article 85 stipulates: Article 85. Incentives for investors of social housing construction investment projects for sale, lease-purchase or lease" <i>... a) Developers are exempt from land rent, land levy for land area of the projects; are not required to determine land value, calculate land rent, land levy from which they have been exempt; are not required to apply for exemption from land rent and land levy, except for cases under point d of this Clause; Remove the category of households using land from 01 January 2025"</i></p>

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Notable points regarding the amended and supplemented Laws

Legal documents

Deloitte's view

- The amended 2024 Land Law will promote economic growth and create development opportunities, but it also presents challenges to investors. The real estate market may undergo significant changes and take on a completely new appearance in the context of upcoming legal regulations, including the 2024 Land Law, the 2023 Housing Law and the 2023 Real Estate Business Law.
- These changes could contribute to fostering competition and transparency in the real estate industry but will likely lead to many small and medium-sized enterprises, and those with weak financial capacity, exiting the market.
- Once the 2024 Land Law officially comes into effect, it may create significant opportunities for development, turning land into an "endogenous resource" of the economy. However, it is essential to emphasize that the new Law operates on market principle, enhancing competitiveness and requiring businesses and land users to be proactive, creative, flexible in their responses, and improve their specialization as well as adherence to legal and market value principles.
- Regarding taxes specifically, real estate businesses might need to proactively review their tax management systems, enhance personnel training, and promptly keep up with regulatory and market changes to improve tax compliance, minimize risks, and ensure sustainable development in the future.



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Law on Real Estate Business 2023: Some notes for foreign-invested enterprises doing real estate business in Vietnam

Legal documents

The Law on Real Estate Business 2023 together with the Land Law 2024 may take effect from 01 August 2024, according to Law 43/2024 of the National Assembly. These laws are intended to create more favorable conditions for economic organizations/foreign-invested enterprises (FIEs) in the Real Estate sector.

Specifically, FIEs with direct or indirect foreign ownership of 50% or less of charter capital (according to the provisions of Article 23 of the Law on Investment 2020) will enjoy the same rights as local enterprises within the scope of real estate business as follows:

Law on Real Estate Business 2014

According to Clause 1b, d, g, h, Article 11, Law on Real Estate Business No. 66/2014/QH13

“b) Rent buildings for sublease;

d) Build houses on the land which is leased by the State for lease; build houses or constructions other than houses on such land for sale, for lease, or for lease purchase;

g) Build buildings on land which is leased from organizations, households or individuals for lease according to proper land use;

h) Receive total or a part of real estate project from investors to build buildings on it for sale, for lease, or for lease purchase;”

Law on Real Estate Business No. 29/2023/QH15

According to Clause 1, Article 10, Law on Real Estate Business No. 29/2023/QH15

“a) Invest in construction of housing or buildings for sale, lease or lease purchase;

b) Invest in construction of infrastructure facilities within real estate projects for transfer, lease or sublease of rights to use land that already has infrastructure;

c) Buy or enter into lease purchase of housing, buildings or their floor areas for sale, lease or offer of lease purchase;

d) Receive transfer of rights to use land that already has infrastructure within real estate projects for further transfer or lease

đ) Lease housing, buildings or their floor areas for sublease;

e) Lease rights to use land that already has infrastructure within real estate projects for sublease;

g) Receive transfer of entire or partial real estate project for continuing construction and trading.”

Deloitte's view

- The 2023 Real Estate Business Law introduces more favorable conditions for foreign-invested enterprises (FIEs). However, the conditions and procedures for FIEs to invest in real estate may also depend on specific policies and practices in each province or city.
- Deloitte believes these positive changes could attract more foreign investment into the real estate sector in the near future, creating additional space for the real estate market to grow even stronger.

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Decree No. 71/2024/ND-CP regulating land prices issued by the Government on 27 June 2024

Legal documents

On 27 June 2024, the Government issued Decree No. 71/2024/ND-CP ("Decree 71") effective from August 1, 2024, specifying the order and content of determining land prices according to 4 methods including comparison, income, surplus, and land price adjustment coefficient as regulated in Article 4 to Article 7 of the Decree.

Article 8, Decree 71 also stipulates the factors affecting land prices of 2 groups of land, namely non-agricultural land and agricultural land.

Factors affecting land prices for non-agricultural land, including:

- a) **Location** of the land plot;
- b) **Traffic** conditions: width, road surface structure, adjacent to 1 or more road surfaces;
- c) Conditions on **water supply and drainage and electricity supply**;
- d) **Area, size and shape** of land parcels and land plots;
- đ) Factors related to **construction planning** include: land use coefficient, construction density, construction boundaries, limits on the height of construction works, limits on the number of basements built according to the detailed construction planning approved by competent state agencies (if any);
- e) The current state of **environment and security**;
- g) **Land use term**;
- h) **Other factors** affecting land prices in accordance with actual conditions, cultural traditions, customs and practices of the locality.



Factors affecting land prices for agricultural land including:

- a) Crop and livestock **productivity**;
- b) **Location and characteristics** of land plots and land plots: the closest distance to the place of production and consumption of products;
- c) **Traffic** conditions for production and consumption of products: width, grade of roads, road surface structures; topographic conditions;
- d) **Land use term**, except for agricultural land allocated by the State to households and individuals according to the agricultural land allocation quota, and agricultural land within the quota for receiving the transfer of rights, shall not be based on the land use term;
- đ) **Other factors** affecting land prices are in accordance with local reality, cultural traditions, customs and practices.



The decree provides guidelines for implementing land valuation proposals, with the Department of Natural Resources and Environment taking the lead and coordinating with relevant departments to advise and submit to the provincial People's Committee specific regulations on **factors influencing land prices and the maximum allowable variance** to determine comparable levels and specific adjustment methods.

In cases where the provincial People's Committee **has not established or lacks comprehensive regulations**, the **land valuation organization will present detailed proposals in an explanatory report for the land pricing plan for review and decision by the Land Price Appraisal Council.**

Deloitte's view

- Decree 71 is one of the legal documents guiding the implementation of the new 2023 Land Law. This is an important legal basis for specialized management authorities (such as the Provincial People's Committee, local Department of Finance, etc.) to synchronize the mechanism for determining financial obligations related to land in the coming period.
- Real estate project investors might need to pay attention when applying for investment policy approval and decisions on land use rights to implement their projects as well as develop specific financial plans to achieve high capital utilization efficiency.

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Tax Administration

Highlighted Official Letters

Tax registration of individuals providing real estate brokerage services

Individuals providing independent real estate brokerage services must register for tax and be granted a tax identification number by the tax authority before starting production and business activities or have obligations to the state budget as prescribed in Article 30 of the Law on Tax Administration No. 38/2019/QH14 dated 13 June 2019 of the National Assembly.

Business individuals specified at point i, Clause 2, Article 4 of Circular No. 105/2020/TT-BTC dated 03 December 2020 of the Ministry of Finance shall submit tax registration dossiers at the Sub-department of Taxation where the business location is located.

Tax registration dossiers comply with the provisions of Clause 8, Article 7 of Circular No. 105/2020/TT-BTC dated 03 December 2020 of the Ministry of Finance.

(Official Letter No. 15519/CTHN-TTHT dated 27 March 2024 issued by the Hanoi Tax Department)



Deloitte's view

- For real estate project investors, brokerage fees represent a significant portion of the selling expenses.
- According to Deloitte's observations, Tax authorities may require individuals providing real estate brokerage services to declare Personal Income Tax (PIT) as business individuals or households. This would result in some related administrative procedures, such as individuals might need to register for taxes and obtain a business household tax code before providing services. Consequently, the tax declaration method may differ from the current common method used in practice (declaring PIT for business individuals instead of withholding PIT for income over VND two (02) million per payment).

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Corporate Income Tax

Highlighted Official Letters

Management and operation fees for residential projects

In principle, the management and operation fees of apartment buildings paid by the owners and users of the apartment building to the investor/the management board to perform tasks according to regulations are not activities of selling goods or providing goods. service. Therefore, when collecting fees for management and operation of other collections and payments according to the Management Regulations... prepare collection documents (do not issue invoices), do not declare and pay Value-added Tax ("VAT") or Corporate Income Tax ("CIT").

For other revenues, the management board shall base on the tax calculation method of the unit to invoice, declare and pay VAT and CIT as prescribed. In the case of Savills (Vietnam) Co., Ltd. - Ho Chi Minh City Branch. Ho Chi Minh City has an agreement to authorize the preparation of an application with the investor/the management board, the provisions of Article 4 of Decree No. 123/2020/ND-CP and Article 3 of Circular No. 78/2021/TT-BTC shall apply.

In case the owner or user of the apartment building is a company that pays the management and operation of the apartment building to the investor or the management board, this company shall be included in the deductible expenses when determining the taxable income for the actual expenses incurred if the conditions specified in Article 6 of Circular No. 78/2014/TT-BTC are met.

(Official Letter No. 3487/CTTPHCM-TTHT dated 09 April 2024 issued by the Ho Chi Minh City Tax Department)

Management and operation fees for residential projects

Funds for management and operation of apartment buildings are, in principle, paid by residents to the investor/ the management board to carry out work according to regulations, so when the Company collects funds for management and operation of apartment owners and users, apartment complex, the Company prepares collection documents according to regulations (no invoices are issued), does not declare or pay VAT or CIT.

In addition to operating management costs, the investor/ the management board generates other revenues such as car and motorbike parking service fees, advertising, space rental, taxi parking, deposit interest, and installation of broadcasting stations... Investor/the management board bases on the unit's tax calculation method to prepare invoices, declare and pay VAT and Corporate Income Tax according to regulations. In case the investor/the management board declares CIT according to the declaration method, shared expenses (which have been paid from operating management funds) cannot be deducted when determining CIT.

(Official Letter No. 7213/CTTPHCM-TTHT dated 09 June 2023 issued by the Ho Chi Minh City Tax Department)

Deloitte's view

- Based on the above-mentioned guidance documents, it can be seen that the tax treatment for the management fees of apartment projects can be classified into two groups: (i) **payment on behalf** of others, where receipts are issued (invoices, VAT and CIT declaration are not required; and (ii) revenue/expenses of the Management company, where VAT invoices should be issued, and VAT and CIT declaration are required according to regulations.
- The real estate management company might need to review the nature of the Management Agreement between **the investor, the management company, and residents (the management board)** to determine the appropriate method of issuing VAT invoices and declaring taxes.

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Corporate Income Tax

Highlighted Official Letters

Expenses for land use

If in 2024, the company remits an additional 10% of the land use levy to the state budget as previously mentioned, this amount can be included in the cost basis of the transferred land, provided meets the conditions outlined in Clause 1 of Circular No. 78/2014/TT-BTC, as amended and supplemented.

The company makes additional declarations and adjustments to increase the deductible real estate transfer expenses in 2013 corresponding to the additional payable land use levy as prescribed in Clause 3, Article 47 of the Law on Tax Administration No. 38/2019/QH14.

(Official Letter No. 4849/CTDAN-TTHT dated 31 May 2024 issued by the Da Nang City Tax Department)

Land rent costs paid annually

On 14 March 2024, the People's Committee of Da Nang City issued Decision No. 510/QD-UBND on approving specific land prices as a basis for collecting land rents paid annually for the company's leased land and applied from May 2016, leading to the official land rental unit price being higher than the temporarily calculated unit price, resulting in an increase in the annual payable land rent amount compared to the land rent amount temporarily calculated and remitted into the state budget, the company shall make additional declaration and adjustment to increase the deductible land rent expense corresponding to the additional land rent amount paid according to the principle that the land rent expense in any year shall be included in the cost of that year.

(Official Letter No. 3457/CTDAN-TTHT dated 08 April 2024 issued by the Da Nang City Tax Department)

Deloitte's view

- Financial obligations related to land are typically quite complex and may result in additional payments when the authorities recalculate or collect extra amounts from the investors or real estate project developers.
- Currently, Tax authorities might accept the mechanism that allows for supplementary declarations of additional financial obligations as project expenses. However, these supplementary declarations would still comply with the fundamental principles of CIT, ensuring that expenses correspond with the revenue in the tax period.



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Personal Income Tax

Highlighted Official Letters

PIT from donation of real estate under authorization

Individuals who have income from receiving gifts of real estate must declare and pay taxes when receiving income. In case Mr. A donates real estate to Mr. B through authorization, Mr. A is not related by blood to Mr. B, so there is not enough basis for tax exemption as prescribed in Article 4 of Decree No. 65./2013/ND-CP.

(Official Letter No. 2509/TCT-DNNCN dated 12 June 2024 issued by the General Department of Taxation)

Deloitte's view

- In addition to individuals owning real estate being subject to PIT, Tax authorities are currently tending to evaluate the nature of transactions, such as management authorization, to determine if they are appropriate for the purpose of imposing PIT similar to buying, selling, or gifting real estate transactions.
- Therefore, the legal documents related to real estate should be presented accurately, reflecting the true nature and form of the transactions.

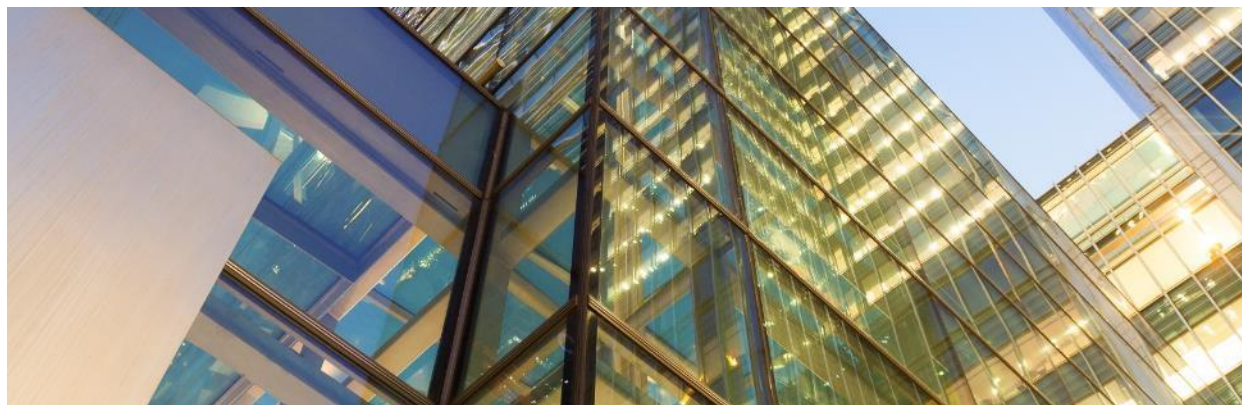
PIT for individuals contributing capital with real estate

Individuals who contribute capital with real estate do not have to declare and pay tax from the transfer when contributing capital. When transferring capital, withdrawing capital, or dissolving an individual enterprise, declare and pay tax on income from real estate transfer when contributing capital and income from capital transfer and real estate transfer when transferring capital. The basis for calculating personal income tax from capital transfer in joint stock companies and from real estate transfer is as prescribed in Articles 16 and 17 of Circular No. 92/2015/TT-BTC dated 15 June 2015 of the Ministry of Finance.

(Official Letter No. 1504/TCT-DNNCN dated 11 April 2024 issued by the General Department of Taxation)

Deloitte's view

- The Tax authorities, following the principle of "substance over form" in the Tax Administration Law, might evaluate the transfer of capital contributions using real estate in both forms, rather than solely relying on the legal documentation of the capital transfer.
- In particular, real estate developers or companies with projects funded by personal capital contributions should pay attention to this issue when restructuring their businesses to ensure they meet all tax obligations to the state.



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