



MAIN CONTENTS

UPDATE LATEST REGULATIONS

1. Law No. 03/2022/QH15 amending and supplementing a number of articles of the Law on Investment, Law on Housing, Law on Enterprises, and Law on Special Consumption Tax.
2. Policies to support businesses and employees under Resolution 11/NQ-CP.
3. Guidance on reducing value-added tax and deductible expenses when determining corporate taxable income.
4. New regulations sharply increase fines for violations in the field of real estate business.

ARTICLE

Contract breach and criminal liability after Covid-19.

GOOD READINGS FOR YOU

1. Propose to stop granting investment decisions for wind power and solar power projects that have not been implemented yet.
2. HoREA makes a proposal on “auction deposit”.

LEGAL GUIDANCE'S

1. Deductible expenses for payment to employees in relation to untaken leave.
2. Input value-added tax deduction.
3. Issue invoice with commercial discount.
4. Make an invoice with a list of intraday retail sales to customers who have not received an issue.

NEWLY ISSUED LEGAL DOCUMENTS IN JANUARY

1. Law No. 03/2022/QH15 amending and supplementing a number of articles of the Law on Investment, Law on Housing, Law on Enterprises, and Law on Special Consumption Tax

On 11/1/2022, the National Assembly passed Law No. 03/2022/QH15 (“Law No. 03”) on amending and supplementing a number of articles of the Law on Public Investment, Law on Investment in the form of public-private partnership, Law on Investment, Law on Housing, Law on Bidding, Law on Electricity, Law on Enterprises, Law on Special Consumption Tax and Law on Civil Judgment Enforcement. Law No. 03 will take effect from 01/3/2022 with some notable key points as follows:

1.1 Adding projects in which investment will be decided by the provincial People's Committee

Compared with the Investment Law 2020, Article 3.2 of Law No. 03 has added the following projects in which investment will be decided by the Provincial People's Committee:

- (1) Investment projects on construction of houses (for sale, lease, or lease-purchase), urban areas with a land use scale of less than 300 hectares and a population of less than 50,000 people.
- (2) Investment projects consistent with the law on cultural heritage regardless of the size of the land area and population, within the protected area II of the relic recognized by the competent authority as a national relic, a special national relic, except for special national relics on the list of world heritages; investment projects regardless of the size of the land area and population in restricted development areas or historic inner cities (identified in urban planning projects) of special-class urban centers.

1.2 Trading in network security products and services is a conditional business line

According to Article 3.5 of Law No. 03, trading in network security products and services (excluding trading in network information security products and services and trading in civil cryptographic products and services) is a conditional business line which is added at ordinal number 132a after ordinal number 132 of Appendix IV to the List of conditional investment and business lines of the Law on Investment.

1.3 Amending and supplementing a number of articles of the Enterprise Law

Accordingly, Law No. 03 has amended and supplemented a number of articles of the Law on Enterprises with the following new provisions:

- If the chairperson or the minutes writer refuses to sign the minutes of the meeting of the Members' Council/Board of Directors, the minutes of the meeting of the Members' Council/Board of Directors shall be effective if it is approved by all other members of the Members' Council/Board of Directors who attended the meeting. The minutes of the meeting clearly state that the chairperson or the minutes-writer refuses to sign the minutes. The signatory of the minutes of the

meeting is jointly responsible for the accuracy and truthfulness of the contents of the meeting minutes. The chairperson and the minutes writer are personally responsible for the damage caused to the enterprise due to the refusal to sign the minutes of the meeting in accordance with the Enterprise Law, the company's charter and relevant laws.

- The mid-year financial statements of enterprises disclosing information are not required to be audited.

1.4 Amending and supplementing regulations on investment and construction of commercial housing projects

Article 4 of Law No. 03 amends and supplementes Article 23.1 of the Law on Housing regarding the form of land use to implement investment projects on commercial housing construction as follows:

- Having lawful land use rights in case of (i) *Having the right to use residential land; or (ii) Having the right to use residential land and other types of non-residential land that meet the conditions for converting land use purposes for implementation of an investment project*, and the use of land for the implementation of commercial housing construction projects is consistent with the master plans and the plans on land use already approved by competent

state agencies in accordance with the law on land, except for cases in which land is recovered by the State for the purposes of national defense and security, or for socio-economic development in the national and public interests and in other cases of recovery as prescribed by law.

- At the same time, after the investment policy and the investor have been approved by the competent authority, the investor is responsible for changing the land use purpose for the project in which the land use purpose must be converted, and fulfilling related financial obligations.

1.5 Reduce special consumption tax on electric cars

Article 8 of Law No. 03 stipulates the reduction of special consumption tax on electric cars as follows:

Type of vehicle	From 01/03/2022 to the end of 28/02/2027	From 01/3/2027
Passenger car with 9 seats or less	Reduce tax rate from 15% to 3%	The tax rate is 11%.
Passenger car with 10 to 16 seats	Reduce tax rate from 10% to 2%	The tax rate is 7%.
Passenger car with 16-24 seats	Reduce tax rate from 5% to 1%	The tax rate is 4%

2. Policies to support businesses and employees under Resolution 11/NQ-CP

On 30/01/2022, the Government issued Resolution 11/NQ-CP (“**Resolution 11**”) on the socio-economic Development and Recovery Program and implementation of Resolution No. 43/2022/QH15 of the National Assembly on fiscal and monetary

policies supporting the Program with the following notable policies to support businesses and employees:

2.1 Enterprises are entitled to a 30% reduction in land and water surface rents in 2022

According to Resolution 11, enterprises will be entitled to a 30% reduction in land and water surface rent in 2022 when they are directly leasing land from the State under a Decision or Contract or a certificate of land use rights, house ownership rights and other properties attached to land, issued by competent state agencies, in the form of land rental with annual payment, that must cease production and business due to the impact of the COVID-19 epidemic.

At the same time, businesses are also allowed to extend the deadline for paying land rent and other taxes such as corporate income tax, personal income tax, value added tax, and special consumption tax in 2022.

2.2 Value-added tax reduction in 2022

Resolution 11 stipulates the reduction of value-added tax for groups of goods and services (*except for some of the following groups of goods and services: telecommunications, information technology, financial activities, banking, securities, insurance, real estate trading, metals, prefabricated metal products, mining products (excluding coal mining), coke, refined petroleum, chemical products, products of the goods and services subject to special consumption tax*) in 2022 as follows:

- Businesses that calculate value-added taxes by the deduction method may apply the value-added

tax rate of 8% (reduced by 2%) for their goods and services.

- Businesses (including business households and individuals) that calculate value-added taxes by the method of percentage on turnover are entitled to a reduction of 20% of the percentage rate to calculate value-added taxes when issuing invoices for goods and services.

2.3 Enterprises are supported with a loan interest of 2%/year for 2 years

According to Resolution 11, enterprises, cooperatives and business households that are able to repay debts and have the ability to recover in the following industries and fields will be supported with an interest rate of 2%/year for commercial loans for the 2 years 2022 - 2023 through the system of commercial banks:

- Aviation, transportation and warehousing.
- Tourism, accommodation services, food catering, education and training.
- Agriculture, forestry and fisheries.
- Processing and manufacturing industry (including machinery, equipment, drugs, pharmaceutical chemicals, pharmaceutical materials).
- Software publishing.
- Computer programming and related operations.

- Information service activities.
- Loans to renovate old apartment buildings, build social houses, houses for workers to buy, rent and hire-purchase.

However, in order to receive the supported interest rate of 2%/year, enterprises must be beneficiaries, have received loans or meet loan conditions, and be approved by commercial banks.

2.4 Support employees with 3 months of house rent

3 months of house rent will be provided for the employees who are in a labour relationship, are renting houses, working in industrial parks, export processing zones, key economic areas; in which the support level for employees returning to the labour market is VND 1 million/month and for employees working in enterprises, VND 500,000/month. The duration of support is the first 6 months of 2022.

2.5 Other supporting policies

In addition to the said support policies, Resolution 11 also has some other support policies for businesses and employees such as:

- 50% reduction of environmental protection taxes on aircraft fuel.

- When determining corporate taxable income, with respect to the expenditure of support and sponsorship contributed by enterprises and organizations for COVID-19 prevention and control activities in Vietnam, this expenditure can be included in the deductible expenses for the tax period in 2022.

- Apply export tax rates and import tax rates according to Decree No. 101/2021/ND-CP and related documents.

- Continue to restructure the repayment term, exempt or reduce loan interests and maintain the same debt group for customers affected by the COVID-19 epidemic.

- Provide loans to support job creation, job maintenance and expansion with a maximum loan amount of VND 10,000 billion.

- Provide loans to individuals and households to purchase, rent-purchase social houses, houses for workers; to build new or renovate and repair houses according to the policy on social housing with a maximum loan amount of VND 15,000 billion.

3. Guidance on reducing value-added tax and deductible expenses when determining corporate taxable income

On 28/01/2022, the Government issued Decree 15/2022/ND-CP (“Decree 15/2022”) providing tax exemption and reduction policies under Resolution 43/2022/QH15 on fiscal and monetary policies to support with socio-economic recovery and development. Decree 15/2022 takes effect from 01/02/2022, specifically guiding the reduction of value added tax (VAT) and deductible expenses when determining the income to calculate corporate income tax (CIT), particularly:

3.1 Goods and services eligible and ineligible for value added tax reduction

According to Article 1.1 of Decree 15/2022, the VAT reduction is applied to the group of goods and services currently subject to the 10% tax rate, except for the following goods and services:

- Telecommunications, financial activities, banking, securities, insurance, real estate trading, metals and prefabricated products, mining products (excluding coal mining), coke, refined petroleum, chemical products specified in Appendix I of Decree 15/2022.
- Products and services subject to special consumption tax specified in Appendix II of Decree 15/2022.
- Information technology in accordance with the law on information technology specified in Appendix III of Decree 15/2022.

However, if the above-mentioned goods and services are not subject to VAT or are only subject to 5% VAT, they will not be entitled to VAT reduction. The reduction of VAT is applied uniformly at the stages of import, production, processing, business and trade.

3.2 Value-added tax reduction levels

Article 1.2 of Decree 15/2022 stipulates 2 levels of VAT reduction as follows:

- Goods and services that are applying the VAT rate by the deduction method: Apply a new VAT rate of 8% (reduced by 2% compared to the normal rate).

- Goods and services for which VAT is calculated by the percentage method on revenue: Reduce 20% of the percentage rate to calculate VAT when issuing invoices for tax-reduced goods and services.

3.3 Value-added tax reduction period

According to Article 3.1 of Decree 15/2022, policies on VAT reduction are applied from 01/02/2022 to the end of 31/12/2022.

3.4 Corporate income tax may be deducted for the expenditure spent on support and sponsor activities to prevent and control the Covid-19 epidemic

According to Article 2 of Decree 15/2022, enterprises and organizations that are CIT payers according to the Law on CIT may, upon determining the taxable income for calculating CIT for the tax period of 2022, add to the deductible expenses the expenditure spent on support and sponsor activities for Covid-19 epidemic prevention and control in Vietnam through donation-receiving organizations.

In case the parent company receives donations from its affiliates to gather all donations into the only source of conducting sponsoring activities, the parent company and its affiliates may, upon calculating the income subject to CIT, add to the deductible expenses the expenditure corresponding to the donations contributed respectively by the parent company and each affiliate. However, the parent company must have a document recording the expenditure of sponsorship, signed and stamped by the representative of the business or organization being the sponsor, and the representative of the unit receiving such sponsorship;

accompanied by invoices, legal documents for the sponsorship contributed in cash or in kind.

The member unit must have legal invoices and documents and a written confirmation from the parent company about the sponsorship of each member unit.

4. New regulations sharply increase fines for violations in the field of real estate business

On 28/01/2022, the Government issued Decree 16/2022/ND-CP (“Decree 16/2022”) on handling administrative violations of construction regulations. Decree 16/2022 will take effect immediately from the date of signing, i.e. 28/01/2022, replacing Decree 139/2017/ND-CP and Decree 21/2020/ND-CP.

Compared to Decree 139/2017/ND-CP, Decree 16/2022 is issued in the direction of increasing fines for violations, especially sharply increasing fines in the real estate business. Particularly:

4.1 Maximum fines for administrative violations

- For construction activities, real estate business: VND1 billion.
- For the production of building materials, management of technical infrastructure works, management and development of houses: VND300 million.

This fine level applies to organizations, for individuals who commit violations, the fine level is equal to ½ of the above-mentioned amount.

- Acts of failing to carry out procedures to adjust or extend construction permits shall result in a fine ranging from 15 million to VND 80 million.

However, for the case of construction not in accordance with the issued construction permit but not falling into the case where the construction permit must be adjusted in accordance with the Construction Law, this is not considered as an act of construction inconsistent with the construction permit.

4.2 Adding a number of violations against the regulations on construction order

Compared with Decree 139/2017/ND-CP, Decree 16/2022 has added a number of new regulations on violations of construction order with the monetary fines as follows:

- Acts of not disclosing the construction permit at the construction site during the construction process will result in a fine ranging from 5 million to VND 30 million.

4.3 Sharply increasing the fines for violations in the field of real estate business

Decree 16/2022 sharply increases the fine level for violations in the field of real estate business (from Article 58 to Article 62) up to VND1 billion (*the previous maximum fine is VND 300 million*), for example:

- The investor of a real estate business project who has improperly mobilized capital; Used capital mobilized from organizations or

individuals or advances from the buyer, the lessee or the lease-purchaser of the real estate formed in the future in noncompliance with the commitment purpose; Transferred the whole or a part of the project without complying with the prescribed procedures or failing to fully satisfy the requirements or conditions as prescribed, ... will be fined from 800 million to VND1 billion (*the previous fine is 270 million to VND300 million*).

- Acts of not providing, providing incomplete or dishonestly providing documents and information about the real estate that they broker will be fined from 200 million to VND250 million (*the previous fine from 40 million to VND 50 million*).
- Providing real estate services without setting up a business as prescribed or having insufficient number of people with real estate brokerage practicing certificates or expired practice certificates will be fined from 120 million to VND 160 million, in addition, this act is also subject to the additional sanction of being suspended from the business of providing real estate trading floor services for 6 to 9 months (*the old fine from 30 million to VND 40 million*).
- In addition, Decree 16/2022 also adds regulations on the acts of lending, renting or borrowing real estate brokerage practice certificates to carry out activities related to real estate brokerage; or organizations or individuals providing real estate brokerage services and concurrently being both a broker and a contract performer in a real estate transaction will be fined from 40 million to VND 60 million.

4.4 Fines for violations by investors against the regulations on management and use of apartment buildings

Article 67 of Decree 16/2022 specifies the fine levels for violations by the investor in the management and use of apartment buildings, for example:

- Acts of providing disco business services; Failure to open an account or open an account for maintenance of the common area of the apartment building in contravention of the regulations, ... will incur a fine of 80 million to VND 100 million.
- Miscalculation of the maintenance costs for the common area of the apartment building as compared with regulations; Failure to write in the contract information on the account of maintenance costs for the area under common ownership of the apartment building as prescribed in the sale contract of houses or other areas of the apartment building; Failure to deposit or delay depositing maintenance funds for the common area of the apartment building in the form of a term deposit at a credit institution operating in the area where the house is purchased, sold, lease-purchased etc., will incur a fine of 160 million to VND 200 million.
- Failing to designate an area as a community house as prescribed by standards and regulations; Failing to organize the first apartment building conference as prescribed, ... will be fined from 200 million to VND 260 million (*the old fine is from 100 million to VND 150 million*).

GV Lawyers would like to introduce our valued readers an article by Lawyer **Hoang Thi Hoai Thu** and Assistant Attorney **Nguyen Cong Duy Thong** titled **“Contract breach and criminal liability after Covid-19”** posted on the Vietnam Lawyers Electronic Journal on 28/10/2021.

(LSVN) – A breach of a contractual obligation is not a crime, a person who violates a contractual obligation, whether an individual or a commercial legal entity, will only take civil liability towards the breached party. However, for each specific case, if the party violating the contract is an individual, intentionally evading in order to appropriate the aggrieved party's property, that individual may be examined for criminal prosecution.

The Covid-19 epidemic has been causing a lot of difficulties to the Vietnamese economy in general and the provinces under its direct impact in particular. Many measures to limit the epidemic spread have been implemented, including social distancing according to Directive 16/CT-TTg dated 31/03/2021 of the Prime Minister. Accordingly, businesses providing non-essential services must suspend operations. For businesses that are allowed to operate, they must meet the epidemic prevention and control conditions and carry out production and business in the form of “3 on-site” operation or “1 route between 2 places” movement, and at the same

time must ensure carry out periodic testing for the workforce at the enterprise.

This situation has thrown into difficulties not only suspended businesses but also businesses that are allowed to operate. As a result, many contracts have been signed but one or more parties cannot meet the agreed terms, leading to a breach of contractual obligations, even a “break of contract” is predictable in many transactions. Faced with such situation, many businesses and individuals have worried whether businesses or individuals breaching contractual obligations due to any epidemic or other obstacles will have to bear criminal responsibility, or whether they merely take civil liability towards the violated party?

In what cases will they be criminally penalized for breach of contractual obligations?

Criminal liability is the offender’s responsibility for bearing the impact of the State’s coercive measures and the penalties prescribed by the penal code. This is the responsibility to bear the legal consequences of criminal acts against the State, not against the person

or organization whose legitimate rights or interests are directly infringed by the criminal act. The purpose of criminal liability is to deprive or limit the offenders of some legitimate rights or interests, to punish, and at the same time to educate them to obey the law, not to re-offend, commit a new crime.

According to the Civil Code 2015 (CC 2015), the Commercial Law 2005, the party that violates the contractual obligations will have to bear civil liability towards the breached party. In fact, many cases of breaching contractual obligations and having to bear civil liability but intentionally evading performance of the responsibility towards the aggrieved party, since then the breaching party has suffered criminal liability in belated regrets as in the following cases:

N.V.T., former Deputy Chief Justice of a District People's Court, signed a credit contract with a bank to borrow VND 250 million, with a loan term of 36 months from 08/07/2014. T. has paid the debt until 25/12/2014. After that, the bank repeatedly asked T. to pay and even went to T.'s office to notify the overdue

debt. T. signed a working record and overdue debt notice but failed to do so, and fled his residence. On 06/04/2020, T. was arrested under a wanted warrant. After the process of investigation, prosecution and trial, the Trial Panel sentenced T. to 30 months in prison for the crime of "abusing trust to appropriate property".

It can be seen that with the act of violating the debt repayment obligation under the credit contract, T. should only have been held civilly responsible to the bank, but T.'s intentional escape so as to evade payment of the debt and appropriate the bank's money has constituted a crime and was prosecuted for criminal liability.

The said example is the case of an individual who violates his contractual obligations and incurs legal liability when he intentionally evades. So, what will be the responsibility of commercial legal entities that violate the contract, is it possible to be prosecuted for criminal liability?

According to the Criminal Code 2015, commercial legal entities are only criminally responsible for certain crimes such as "Smuggling", "Illegal transportation of goods and currency across borders", "Manufacturing and

trading in counterfeit goods"; ... Beyond this scope, the commercial legal entity will not be charged with other counts. Therefore, if violating a contractual obligation, then intentionally evading the performance of civil liability, the commercial legal entity may be subject to the application of the prescribed measures by the competent authority to force the performance of civil liability towards the aggrieved party.

In short, a breach of a contractual obligation is not a crime, the person who violates a contractual obligation, whether an individual or a commercial legal entity, will only be liable to the aggrieved party. However, for each specific case, if the party violating the contract is an individual intentionally evading in order to appropriate the aggrieved party's property, that individual may be examined for criminal prosecution.

It is whether a violation of contractual obligations caused by the Covid-19 epidemic will be criminally responsible

According to the CC 2015, the obligor that violates the obligation shall bear civil liability towards the obligee. However, not in every case the violator shall bear civil liability towards the aggrieved party. For

example, if the breaching party fails to properly perform its obligations due to a force majeure event or due to the implementation of a decision of a competent state management agency that the parties cannot know at the time of entering into the contract, violating parties are not liable for civil liability, unless otherwise agreed or otherwise provided by law in accordance with the CC 2015 and the Commercial Law 2005.

Upon applying the said exemption provisions to the case where a contract has been signed but either party cannot perform its obligations in the context of the outbreak of the Covid-19 epidemic, the following possibilities may arise: (i) the parties could not have foreseen the outbreak of an epidemic, when an epidemic occurred, either party tried all ways but could not perform its obligations, (ii) not directly from the epidemic but due to a decision on the implementation of social distancing by the competent authority where either party is forced to breach its obligations without overcoming this despite having tried every way. Depending on each case, the Covid-19 epidemic or a decision of a competent authority will become a force majeure event, enabling the violating party to be exempted from civil

liability towards the violated party. In this case, the violating party will not be prosecuted for penal liability because it only violates the civil obligation due to force majeure events, and does not intentionally appropriate the property of the aggrieved party. However, it should be noted that the violating party should not arbitrarily refer to the Covid-19 epidemic or a decision of a competent authority as a force majeure event in order to be exempted from performing obligations and from civil liability. Because, if the breaching party fails to perform its contractual obligations and the conditions of force majeure events (objective, unforeseen, irreparable) are not guaranteed, the breaching party is likely to bear legal consequences. In addition, if the force majeure event no longer exists, that is, the epidemic situation improves or the decision of the competent authority on social distancing is abolished, the violating party that is no longer hindered by force majeure event must be obliged to continue to perform the contract (unless the parties agree to terminate the contract). At that time, if the violating party fails to perform its obligations, intentionally evades it in order to appropriate the property of

the violated party, it is likely that the violating party will be examined for criminal prosecution.

Solutions for the parties to protect their legitimate rights and interests

Currently, social distancing has been eased, but epidemic control measures are still being strengthened. Businesses have gradually resumed operations, but have not yet been able to recover immediately under the “new normalcy”. Therefore, the violation incidents and their consequences will be difficult to handle satisfactorily and promptly. In order to be able to maintain the partnership but still legally protect their interests in order to survive and develop in the “new normalcy” and “living with the epidemic”, the question is raised: what businesses and individuals who signed the contract should do?

For the breached party: If it is not possible to negotiate together, depending on the subject that has entered into the contract, the aggrieved party may choose the appropriate solution as follows:

– If the subject entering into a contract with them is a commercial legal entity or other organizations, the two parties may request an

intermediary mediation unit or competent jurisdiction to resolve the dispute.

– If the subject of entering the contract with him is an individual, the violating party can also choose the said settlement method. However, when realizing that the violating individuals intentionally appropriate their property, the aggrieved party may request the competent authority to examine and impose the criminal liability on the violator, and at the same time any claim for damages.

For the violating party: Evading the performance of obligations is not allowed, it should be proactive in proposing possible solutions for the parties to consider and come to an agreement. In addition, it is necessary to stay calm before threats to criminalize civil disputes because they may just be groundless accusations to pressure the violator.

At the same time, the violating party can contact law-practicing organizations for advice and assistance in negotiating with the aggrieved party as well as avoiding potential risks and minimizing the risk of constituting any crime.

1. Propose to stop granting investment decisions for wind power and solar power projects that have not been implemented yet

The Ministry of Industry and Trade has just requested the Prime Minister to instruct localities to temporarily suspend the granting of investment decisions for wind power and solar power projects that are already in the approved national electricity development planning but have not yet been implemented until 26/01/2022 pending the results of the review during the construction and completion of the Power Plan VIII under the direction of the Government.

For the projects that have been approved, and have an investment decision until 26/01/2022 and are not yet eligible to apply the Feed-in Tariffs (FIT) mechanism under Decision 13/2020/QĐ-TTg and Decision 39/2018/QĐ-TTg, the Ministry of Industry and Trade also proposed that the Prime Minister allows the investor to negotiate with the Vietnam Electricity (EVN) to determine the electricity purchase and sale price within the electricity generation price bracket promulgated by the Ministry of Industry and Trade, in accordance with the prescribed process.



Installing pole propellers at Dong Hai 1 wind power project (Dong Hai district, Bac Lieu province). Illustration: Chanh Da/TTXVN

According to the statistics of the Ministry of Industry and Trade, the capacity of wind power projects that have been added to the planning is currently 11,921MW. Of these, 146 projects have signed power purchase agreements (PPAs) with a capacity of 8,171,475MW.

The number of projects and parts of projects that have come into commercial operation (COD) in the period from 2011 to the end of 31 October 2021 is 84 projects with a total capacity of more than 3,980 MW. Among these, there are 15 projects put into operation with a partial capacity of more than 325 MW and a total non-commercial capacity of more than 1,031 MW.

For solar power projects, the situation is not special when by the end of 31/12/2020, 148 projects have been put into COD with a total capacity of more than 8,652 MW. This figure is much lower than the total planned additional solar power capacity of 15,400 MW.

By Duc Dung (VNA), baotintuc.vn

2. HoREA makes a proposal on "auction deposit"

GD&TD - According to HoREA, the Law on Auction 2016 stipulates: Auction participants must pay a minimum auction deposit of 5% and maximum 20% of the starting price of the auctioned asset.

In the aftermath of the controversy over the auction of Thu Thiem land with sky-high prices, and then the winning investors decided to lose the deposits, the Ho Chi Minh City Real Estate Association (HoREA) has just proposed that the National Assembly Standing

Committee should soon amend and supplement the regulations on auction of land use rights for the implementation of real estate, housing and urban construction projects.

Among the recommendations that HoREA sent to the National Assembly Standing Committee is the one about considering amendment and supplement of Article 39.1 of the Law on Property Auction 2016 regarding the fact that investors must pay an "auction deposit" to participate in the auction of

land use rights for implementation of commercial real estate, housing, and urban construction projects. Accordingly, it should be regulated in the direction that investors can only “bid” for the auctioned land lot “when there is enough money in the account”, or “when the total assets are higher than the bidding value”, or “when there is a payment guarantee from the bank” (similar to Article 7.1.a of Circular 120/2020/TT-BTC dated 31/12/2020 of the Ministry of Finance on “securities transactions”).



4 plots of land just put up for auction in Thu Thiem by the People's Committee of Ho Chi Minh City have sparked a stir in the real estate market because of their sky-high selling prices.

HoREA also proposed considering the regulation on “price threshold” (it is possible to consider setting a “price threshold” at about one and a half times the “auction starting price”), the investor who has paid the “auction deposit” can only quote a price that does not exceed the “price threshold”, if the “price threshold” is exceeded, the investor can only “bid” for the auctioned land lot “when there is enough money on the account”, or “when the total assets are higher than the bid value”, or “when there is a payment guarantee from the bank”.

In particular, HoREA believes that ministries and agencies should assign the responsibility to the provincial People's Committee to decide on the “auction deposit” suitable for auctioned asset, especially in case of an auction of land use rights to carry out the investment projects in commercial real estate and housing construction.

In which, there is a condition requiring that investors must be “financially qualified” and “do not violate the law on land” in order to participate in the auction of land use rights to implement the commercial investment projects in real estate and housing construction.

According to HoREA, the Law on Auction 2016 stipulates: Auction participants must pay a minimum

deposit of 5% and maximum 20% of the starting price of the auctioned asset. In case of winning the auction, the auction deposit and interest (if any) will be converted into a formal deposit to secure the performance of the commitment or performance of the auctioned asset purchase and sale

contract or for fulfillment of the obligation to purchase the auctioned assets after being approved by a competent authority...

HoREA also pointed out that the limitation of the Law on Auction 2016 is that it does not require investors to prove that they already have money in the account of a credit institution, or have to pay an additional “auction deposit”, or have to prove the value of the total assets, or to have a written payment guarantee from a credit institution to ensure the payment obligation for the auctioned asset as land use rights, because the land plots that are put up for auction often have very high values.

Due to the said shortcoming - prescribed payment of an “auction deposit” much lower than the value of the “auctioned asset”, in practice there have been a number of cases where investors win auctions of land use rights but after the auction has ended, they refuse to pay for the auctioned asset and accepted to lose the “auction deposit”, or there are cases where the investor delays the payment, as in the case of auction of the site at 23 Le Duan, District 1, Ho Chi Minh City in 2014 which was won by Tan Hoang Minh, they did not pay for the auctioned asset until 2017, and agreed to pay a fine for late payment.

By Anh Nguyen, Giaoducthoidai.vn

1. Deductible expenses for payment to employees in relation to untaken leave

In case the Company pays the salary for the employee's untaken annual leave days as prescribed by the Labour Code and guiding documents, the Company may include the said payments in the deductible expenses if they meet the conditions specified in Article 4.1 and do not belong to Article 4.2 of Circular 96/2015/TT-BTC and amended and supplemented documents (if any).

Ha Noi City Tax Department replies to the question of VNPT Electronic Payment JSC. in Official Letter No. 3925/CTHN-TTHT dated 27/01 2021.

2. Input value-added tax deduction

If the Company incurs input value-added tax (VAT) on goods and services (including fixed assets) used simultaneously for the production and trading of VAT liable and non-liable goods and services, only the input VAT amount of goods and services used for the production and trading of goods and services subject to VAT may be deducted as prescribed in Article 1.9.a of Circular 26/2015/TT-BTC.

For the non-deductible input VAT amount is, the Company may account it into expenses to calculate corporate income tax or account it into the cost of fixed assets, minus the VAT amount of goods and services at each time of purchase with a value of VND 20 million or more without non-cash payment documents as guided in Article 14.9 of Circular 219/2013/TT-BTC.

Ha Noi City Tax Department replies to the question of Vietnamobile Telecommunications JSC. in Official Letter No. 1832/CT-TTHT dated 17/01 2021

3. Issue invoice with commercial discount

In case the Company uses e-invoices according to Decree 123/2020/ND-CP, and applies a commercial discount to customers as prescribed by law, the content of the invoice must comply as prescribed in Article 10.6.dd of Decree 123/2020/ND-CP.

In case the commercial discount is based on the quantity and sales of goods and services, the discount amount of the sold goods will be amended based on the goods and service invoice of the last purchase or the next period; in case the discount amount is made at the end of the sales discount program (period), an amended invoice will be issued with a list of the invoice numbers to be amended, the amended amount and tax as prescribed in Article 22.7 of Circular 219/2013/TT-BTC.

Ha Noi City Tax Department replies to the question of Lock & Lock HN Co. Ltd. in Official Letter No. 457/CTHN-TTHT dated 07/01/2022.

4. Make an invoice with a list of intraday retail sales to customers who have not received an issue

In case the Company is a retail commercial establishment, the accounting of all business activities will be carried out at the head office where the cash register system connected to the computer has not yet met the conditions for data transfer connection with the tax authority, for each sale of goods with a printed Bill for any customer, the Bill data is stored on the system, at the end of the day, based on the information from the Bills the Company will summarize and issue e-invoices to customers who do not need to receive invoices as prescribed in Article 9.4.g of Decree 123/2020/ND-CP.

Ha Noi City Tax Department replies to the question of Long Bien Investment Trading JSC. in Official Letter No. 1460/CTHN-TTHT dated 14/01/2022.

No.	Document title	Issuance date	Effective date
NATIONAL ASSEMBLY			
1	Law No. 03/2022/QH15 amending and supplementing a number of articles of the Law on Public Investment, Law on Investment in the Form of Public-Private Partnership, Law on Investment, Housing Law, Bidding Law, Electricity Law, Law on Enterprises, Law on Special Consumption Tax and the Law on Enforcement of Civil Judgments.	11/01/2022	01/03/2022
2	Resolution 43/2022/QH15 on fiscal and monetary policies supporting socio-economic recovery and development program.	11/01/2022	11/01/2022
GOVERNMENT			
1	Resolution 11/NQ-CP on the Socio-economic Recovery and Development Program and the implementation of Resolution 43/2022/QH15 of the National Assembly on fiscal and monetary policies to support the Program.	30/01/2022	30/01/2022
2	Decree 16/2022/ND-CP stipulating penalties for administrative violations of construction regulations.	28/01/2022	28/01/2022
3	Decree 15/2022/ND-CP on tax exemption and reduction policy under the National Assembly's Resolution 43/2022/QH15 on fiscal and monetary policies supporting socio-economic recovery and development program.	28/01/2022	01/02/2022
4	Decree 12/2022/ND-CP stipulating penalties for administrative violations in the fields of labour, social insurance, and Vietnamese Guest Workers.	17/01/2022	17/01/2022
5	Decree 10/2022/ND-CP on registration fee.	15/01/2022	01/03/2022
6	Decree 08/2022/ND-CP detailing a number of articles of the Law on Environmental Protection.	10/01/2022	10/01/2022
7	Decree 02/2022/ND-CP detailing the implementation of a number of articles of the Law on Real Estate Business.	06/01/2022	01/03/2022
MINISTRY OF INDUSTRY AND TRADE			
1	Circular No. 03/2022/TT-BCT on the suspension of temporary import for re-export of medical masks, medical gloves and anti-epidemic isolation suits.	28/01/2022	15/03/2022
	Circular 01/2022/TT-BCT amending and supplementing a number of articles of Circular 47/2014/TT-BCT on the management of e-commerce websites, and Circular 59/2015/TT-BCT providing for the management of e-commerce activities via mobile applications	18/01/2022	08/03/2022
MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT			
1	Circular 02/2022/TT-BTNMT detailing the implementation of a number of articles of the Law on Environmental Protection	10/01/2022	10/01/2022
STATE BANK OF VIETNAM			
1	Circular 02/2022/TT-BTNMT detailing the implementation of a number of articles of the Law on Environmental Protection	20/01/2022	20/01/2022



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