

Client Alert

July 2011

Non-Agricultural Land Use Tax to be Applied from 2012

Following the new Law on Non-Agricultural Land Use Tax ("**Law on NALUT**") which will take effect from 1 January 2012, the Government issued Decree No. 53/2011/ND-CP ("**Decree No. 53**") on 1 July 2011 to implement the Law.

Types of land subject to Non-Agricultural Land Use Tax ("**NALUT**")

The following types of land are subject to NALUT:

- Residential land in rural areas and urban areas;
- Non-agricultural land for production and business purposes: land for developing industrial zones, land for construction of business premises, land for exploitation and processing of mineral resources, land for production of construction materials and potteries; and
- Non-agricultural land used for other business purposes.

Taxpayer

Taxpayers are organizations, households and individuals that have land use rights subject to NALUT. If land use right certificates are not yet issued, the entity that is using the land is the taxpayer. In some specific cases, taxpayers are determined as follows:

- (i) If the State leases land, the lessee is the taxpayer;
- (ii) If the entity that has the land use right leases land in accordance with a contract, the taxpayer is determined based on agreement in the contract. If there is no such agreement in the contract, the entity that has the land use right is the taxpayer;
- (iii) If the land for which a land use right certificate has been granted is under a dispute, the entity that is using the land is the taxpayer. Tax payment is not a basis for settlement of the dispute;
- (iv) If several entities jointly have the land use right for a piece of land, the taxpayer is the legal representative; and
- (v) If the entity that has the land use right contributes capital in the form of land use right in a new legal entity, the new legal entity is the taxpayer.

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Taxable base and tax rates

The taxable base is the area of the land multiplied by the land price which is stipulated by the local people's committee and fixed for every 5 years. The tax rate is 0.03% for land within the quota, and 0.07% and 0.15% for land in excess of the quota and 0.2% for trespassed land.

Tax exemption and reduction

Tax exemption or 50% reduction are available to land for specially encouraged projects, encouraged projects, projects located in areas with especially difficult socioeconomic conditions, and projects located in areas with difficult socioeconomic conditions.

Impacts

NALUT will replace the land tax which was stipulated in Ordinance on Land and Housing Tax and Decree No. 94-CP dated 25 August 1994 of the Government ("Regulations on Land and Housing Tax"). In accordance with Regulations on Land and Housing Tax, land lessees- particularly foreign invested companies paying land rental- are not subject to land tax. Under the new regulation on NALUT, business entities that lease land and pay land rental will incur additional cost of NALUT from 2012. Parties to land lease agreements should be made aware of this new additional tax cost and specifically agree in land lease agreements on the party liable for this tax

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