

# Tax Alert

August 2022

## Decree 49/2022/ND-CP amending a number of articles of decrees on Value Added Tax (“VAT”)

On 29 July 2022, the Government issued Decree 49/2022/ND-CP supplementing and amending a number of articles of Decree 209/2013/ND-CP on VAT and its amending decrees (i.e. Decree 12/2015/ND-CP, Decree 100/2016/ND-CP and Decree 146/2017/ND-CP). The key changes under Decree 49 are as follows:

### 1. Amending the provision on deductible land price used in VAT calculations in cases of real estate transfer

- Where the State allocates land, or leases the land, to a taxpayer to construct infrastructure and housing for sale, the deductible land price comprises of land use fees / land rental fees payable to the State budget and the cost of land compensation and site levelling in line with the compensation scheme approved by competent authorities, which is offset against the land use fee/land rental fees payment in accordance with prevailing regulations. Previously, it was not clear if the deductible land compensation and site levelling cost is based on the actual cost incurred, or the amount approved by the competent authorities.
- Where a business establishment receives a LUR transfer from an organization or individual, the deductible land price is the land price valued as at the transfer date, exclusive of the infrastructure value. Previously, the taxpayers may elect to claim a deductible land price inclusive or exclusive of the infrastructure value.

### 2. Amending the provision on VAT-able price to allocate VAT payable for dependent-accounting power plants of EVN / GENCO

The VAT-able price to calculate VAT payable to the province where the plant is situated shall be as follows:

- For a hydro power plant: equal to 35% of the average retail price of electricity (exclusive of VAT).
- For a thermal power plant: equal to the selling price as invoiced by the plant to the buyer as stipulated under the Power Purchase Agreement (“PPA”), or the average retail price of electricity if the PPA is not available (exclusive of VAT).
- For other power plants: equal to the selling price corresponding to the type of power generation as regulated by the competent authorities, exclusive of VAT.

Previously, the VAT-able price for hydro power plant was the electricity selling price to the parent company announced by EVN before 31 March annually, but not lower than the average annual cost of power generation.

The VAT-able price for a thermal power plant was the electricity selling price to the parent company announced by EVN before March 31 annually but not lower than the average electricity purchase price of the preceding year.

### 3. Amending the provision on VAT refund for investment projects

- Decree 49 supplements provisions of VAT refundability of investment projects registered to be implemented with multiple phases or multiple components, new investment projects in the same province where the headquarters is located, and confirms the VAT refund for petroleum exploration and development projects in the investment stage. Decree 49 removed the requirement of construction period to last for more than 1 year to get VAT refunded on an annual basis.
- Decree 49 specifies the following requirements to get VAT refunded for investment projects in conditional business sectors:
  - An investment project in the construction stage which, as regulated by the investment and governing laws, has obtained the license to carry out the conditional businesses from the competent authorities, either in form of a license or certificate or written confirmation / approval.
  - An investment project in the construction stage which, as regulated by the investment and governing laws, has not yet been required to obtain, the license to carry out the conditional businesses from the competent authorities, either in form of a license or certificate or written confirmation / approval.
  - An investment project in the construction stage which, as regulated by the investment and governing law, is not required to obtain the license to carry out the conditional businesses from the competent authorities, either in form of a license or certificate or written confirmation / approval.

Previously, due to ambiguous regulations, in assessing the eligibility and granting the VAT refund, the local tax authorities always requested the taxpayers to show a license to carry out conditional businesses.

Decree 49 shall take its effect from 12 September 2022 while the provision of VAT refund for conditional businesses would be retroactively effective from 1 July 2016.

If a taxpayer had been subject to a VAT refund claw-back as per the provision of Decree 100/2016/ND-CP, the tax authorities would adjust the VAT amount, interest on late payment, and administrative penalty (if any), which subsequently may be handled with as overpaid tax payment for offset or refund as regulated by the law on tax administration.

Please contact KPMG for further consultation on the impact of the Decree 49 to your business.

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