

LEGAL UPDATES (July 17th , 2020)

In this week, we would like to bring to your attention a brief overview of the recent legal news concerning the following:

- *July 30th, 2020 – Deadline for submission of applications for extension of tax payment and land rent*
- *Some new points of the Law amending and supplementing a number of articles of the Construction Law*
- *Being cautious in dealing with two models of condotel and tourist villa*

1. July 30th, 2020 – Deadline for submission of applications for extension of tax payment and land rent

On April 08th, 2020, the Government issued Decree No. 41/2020/ND-CP extending the deadline for paying taxes and land rents, which takes effect on April 08th, 2020, namely:

Applicable subjects:

- (i) Enterprises, organizations, households and individuals (hereinafter referred to as “taxpayers”) that are manufacturers in the following business lines:
 - a) Agriculture, forestry, aquaculture
 - b) Production and processing of food; textiles; garments; manufacture of leather and leather products; wood treatment and manufacture of products from wood, bamboo, rattan (except furniture); manufacture of products from straw and plaiting materials; manufacture of paper products; manufacture of rubber and plastic products; manufacture of products from other non-metallic minerals; metal production; mechanical working; metal treating and coating; manufacture of electronics, computers and optical products; manufacture of automobiles and other motor vehicles; furniture production;
 - c) Construction.
- (ii) Taxpayers that operate in the following business lines:
 - a) Transport and warehousing; accommodation, food and drink; education and training; healthcare and social assistance; real estate trading
 - b) Employment services; travel agencies, tourism services and auxiliary tourism services;
 - c) Composing, art and entertainment; library, archive, museum operation and other artistic activities; sports and entertainment; cinemas.

- (iii) Taxpayers that are manufacturers of prioritized ancillary industry products or key mechanical products.
- (iv) Small enterprises and micro-enterprises
- (v) Credit institutions and foreign bank branches (FBBs) shall provide assistance for enterprises, organizations and individuals affected by Covid-19 as prescribed by the State bank of Vietnam (SBV). SBV shall publish the list of credit institutions and FBBs that provide assistance for tax authorities to grant deferral of tax and land rent in accordance with this Decree.

Procedures for extension

- (i) A taxpayer eligible for tax deferral shall submit an application for tax and land rent deferral (electronically or another method) using the form enclosed by this Decree to the supervisory tax authority. The application shall include all payments of tax and land rent deferred and be submitted together with the monthly or quarterly tax declaration as prescribed by tax administration laws.

In case the application for tax and land rent deferral is not submitted together with the monthly or quarterly tax declaration, it shall be submitted by **July 30, 2020**, the tax authority still defers tax and land rent incurred before the application is submitted if eligible.

In case a taxpayer leases land from the State in more than one administrative division, the taxpayer's supervisory tax authority shall send copies of the application for tax and land rent deferral to the tax authorities in charge of the areas where land is leased.

- (ii) Taxpayers shall be responsible for their eligibility for deferral as prescribed in this Decree. Tax and land rent shall not be deferred if the application for tax and land rent deferral is submitted after July 30th, 2020.
- (iii) The tax authority is not required to inform the taxpayer whether the application is granted or rejected. In case the tax authority discovers that the taxpayer is not eligible for deferral after the application is granted, the tax authority shall send a written notice of ineligibility for deferral to the taxpayer and the taxpayer shall fully pay the tax and/or land rent plus late payment interest that accrues over the period from the deadline to the payment date. In case the tax authority discovers that the taxpayer is not eligible for deferral after the end of the deferral period, the taxpayer shall fully pay the outstanding tax, fine and late payment interest to the State budget determined by the tax authority.
- (iv) Over the deferral period, under the application for tax and land rent deferral, the tax authority shall not charge late payment on the deferred tax and land rent (even if the application for deferral is submitted after submission of the monthly (or quarterly) tax declaration but not later than July 30, 2020).

2. Some new points of the Construction Law (amended and supplemented)

On June 17th, 2020, the National Assembly of Vietnam adopted the Construction Law (amended and supplemented), which will take effect on **January 1st, 2021**, with some highlights as follow:

Cases exempted construction permits:

- (i) State-secret works; emergency construction works
- (ii) Works under projects funded by public investment which are invested by the investment decision of the following: Prime Minister, the head of a central agency of a political organization, the Supreme People's Procuracy, the Supreme People's Court, the State Audit Office, the President Office, the National Assembly Office, Ministries, Ministerial-level agencies, Government agencies, central agencies of the Vietnam Fatherland Front and socio-political organizations, presidents of People's Committees at all levels decide to invest in construction;
- (iii) Temporary construction works prescribed in Article 131 of this Law;
- (iv) Constructions for repairing or renovating works inside, or constructions for repairing or renovating exterior surfaces not adjacent to roads in urban areas with architectural management requirements prescribed by competent state agencies; The repair or renovation do not change the function of use, do not affect the safety of the load-bearing structure of the work, in accordance with the construction planning already approved by competent state agencies, safety requirements for fire and explosion prevention and fighting and environmental protection;
- (v) Advertising works that are not subject to construction permits in accordance with the advertising legislation; passive telecommunications technical infrastructure works as prescribed by the Governmental regulations;
- (vi) Construction works located in two or more provincial-level administrative units; works which constructed in lines outside urban areas, complied with construction planning or technical specialized planning that already approved by competent state agencies;
- (vii) Construction works have been notified results by construction specialized agencies in the evaluation of construction designs after basic designs are eligible for approval for construction designs and met construction licensing conditions;
- (viii) Individual houses with a scale of under 07 floors belonging to urban construction investment projects, housing construction investment projects with detailed planning 1/500 approved by competent state agencies
- (ix) Grade-IV construction works, individual houses in rural areas of less than 07 storeys and in areas without urban planning, functional area construction planning or detailed residential construction planning for rural residence that have been approved by competent state agencies; construction works of grade IV, individual houses in mountainous areas and islands in areas without urban planning, construction planning of functional areas; except for individual constructions and houses built in conservation areas, historical-cultural relics;

Shorten the time of construction permit issuance to 20 days from the date of receiving complete and valid documents instead of 30 days as prescribed in the Law on Construction 2014.

3. Being cautious in dealing with two models of condotel and tourist villa

On February 14th, 2020, the Ministry of Natural Resources and Environment issued Official Letter No. 703 / BTNMT-TCQLĐĐ, guiding land use policies and ownership certification of non-residential constructions. The Ministry of Natural Resources and Environment recognizes condotels and tourist villas are tourist accommodation establishments, and provision of accommodation services in the condotels and tourist villas are a model of tourism services and listed under accommodation and food service category, and the land use for the aim of service business is considered to be land for commercial and services.

Besides, the Ministry of Natural Resources and Environment also instructs on the issuance of construction's ownership certificates, specifically: "In case of projects having condotels and tourist villas eligible for transfer according to Law on Real Estate Trading, certifying ownership of the construction on behalf of the transferees shall follow Article 32 of Decree No. 43/2014/ND-CP dated May 15th, 2014 of Government on elaborating to Land Law, Clause 22 Article 2 of Decree No. 01/2017/ND-CP dated January 6th, 2017 of Government on amendments to Decrees on elaborating to Land Law ". However, this provision is not specific about issuing the certificate of construction's ownership for each apartment or the whole project.

According to the view of the Ministry of Public Security (MPS), the issuance of construction's ownership certificates for condotel and tourist villa is required to be governed by more precise and detailed regulations. This may reduce the impact on borrowing loan from banks by asset mortgage, which potentially leads to the risk of insecurity of the credit system. Moreover, assuming that in the case of issuing a certificate of construction's ownership to each buyer of apartments in the project which will cause many complex problems about tight security in managing and operating building, managing investment and business activities of apartments; managing and withdrawing projects when the land use term of the projects are expired.

The MPS has requested the Prime Minister to direct the Ministry of Construction to propose new amendments and supplements to the Law on Real Estate Trading. Additionally, regulations on names, managerial regime, business conditions, trading and leasing in relation to condotel, officetel and tourist villa should be clearly specified.

The Ministry of Culture, Sports and Tourism is also expected to complete regulations in terms of management and operation of complex buildings, which is used for living, accommodation, and leasing offices, etc. It is considered to be a base for completing laws governing complex and multifunctional buildings and multi-ownership.

The MPS also proposes the Prime Minister to assign the Ministry of Natural Resources and Environment to conduct a research to amend and supplement new regulations on categorizing lands and issuing certificates of use right, ownership of house and assets attached to new forms of land. This is supposed to be a new legal ground for facilitating the implementation of local State's authorities and enterprises. **The legalization of projects of tourist apartments, tourist villas, offices combined with accommodation into resident houses has also been proposed to remove by the MPS.**

Therefore, regarding the models of Condotel and Tourist Villa, individuals currently in business should carefully review the compliance of conditions as prescribed by the law and legal documents of Condotel and Tourist Villa which are intended to receive the transfer.

We hope this short Letter of legal updates would bring you useful information.

Best regards.

Contributor(s):**Mr. LE TIEN DAT****Managing Partner****M** (+84) 939 107 387 | **E** dat.le@apolatlegal.com**Ms. BUI BICH PHUONG****Associate****M** (+84) 933 632 693 | **E** phuong.bui@apolatlegal.com

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Contacts:**HO CHI MINH CITY (Head office)**

5th Floor, GIC Buidling
36A Nguyen Gia Tri, Binh Thanh District
Ho Chi Minh City, Vietnam
Tel: +84-28-3899 8683
Info@apolatlegal.com
www.apolatlegal.com

SINGAPORE (Affiliated office)

#26-10, SBF Center,
160 Robinson Road
Singapore 068914
Tel: +84-93-2014 986
Info@apolatlegal.com
www.apolatlegal.com