

LEGAL UPDATE (20.01.2020)

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

- *Regulations and current status on declaration of transaction value of real estate transfer;*
- *The viewpoint of tax authorities while handling real estate transfer transactions declared at a low value;*
- *The criminal liability of corporates for committing the intellectual property crimes.*

1. Regulations and current status on declaration of transaction value of real estate transfer

According to the tax law, personal income tax (PIT) on real estate transfer income is determined as follows:

Payable amount of PIT = Purchase Price x 2% Tax Rate

Regarding registration fee, Clause 1, Article 7 Decree 140/2016/ND-CP prescribes the rate of registration fee for houses and land is 0.5%. Circular 301/2016/TT-BTC stipulates that the payable amount of registration fee is calculated as follows: (Article 12 of Circular No. 111/2013 / TT-BTC, amended and supplemented by Circular No. 92/2015 / TT-BTC).

Payable amount of Registration fee = The calculating value of property x ratio of registration free (%)

In which, the calculating value of land is the price in The Land Price list issued by the provincial People's Committee under the Land Law at the time of registration. The calculating value of house is the price issued by the provincial People's Committee under the Construction Law at the time of registration. (Clause 1, Article 6 of Decree No. 140/2016 / ND-CP, amended by Decree 20/2019 / ND-CP).

In Official Dispatch No. 5235 / TCT-DNNCN dated December 16, 2019 sent to the Provincial Tax Department, the General Department of Taxation addresses the facts that the Transfer Prices of real estate declared by the Tax Payer for submitting PIT and registration fee are not close to the market price, namely:

Taxpayers declare the Transfer Price much lower than the land price issued by the provincial People's Committee;

There is a mass difference in the Transfer Price of the same real estate in different transactions in a short time;

The taxation of real estate formed in the future is much higher than the taxation of built-up real estate, which is granted a land use right certificate...

2. The viewpoint of tax authorities while handling real estate transfer transactions declared at a low value

According to the above-mentioned facts, the General Tax Department has requested the provincial Tax Departments to strictly implement the following measures:

- Actively coordinate with relevant state management agencies to advise and report to the provincial-level People's Committee develop a Land Price List for the term 2020-2024 close to the land price on the market. For land located in urban and residential projects, after the infrastructure has been built, the Department of Taxation must actively report and propose the provincial People's Committee to adjust the Land Price List.
- Report to the provincial People's Committee to request Notary Offices in the area to strengthen coordination, exchange information with the tax authorities to jointly manage the taxable price of the transfer of real estate to be suitable with the actual price transactions.
- Strengthen monitoring, supervision and direction of Sub-departments of Taxation to strengthen the management of personal income tax for real estate.

From the requests to be more stringent in the tax management work of the General Department of Taxation above, the Sub-departments of Taxation have taken more drastic measures against the acts of declaring low transfer value and have cheating signs of evading taxes.

For example, in December 2019, the Tax Department of District 10, Ho Chi Minh City sent dispatch to the Police of District 10 to request for investigate and clarify the signs of tax evasion in real estate transfer transactions, when the taxable transfer value of apartment (second time) is declared by the parties lower than the published selling value of the investor and lower than the market value.

Therefore, individuals should pay attention to declare the taxable transfer value of real estates in accordance with the actual transfer value to avoid risks of being applied administrative sanctions from state agencies, or more seriously, criminal prosecution.

3. The criminal liability of corporates for committing the intellectual property crimes

The Penal Code Number 100/2015/QH13 coming into effect from January 01st, 2018, has regulated on the criminal liabilities of commercial legal entities for specific crimes prescribed in Article 76 of the Penal Code.

In particular, crimes infringing intellectual property rights include crimes of Infringement copyright and related rights (Article 225) and crimes of Infringement industrial property rights (Article 226); both are in the scope of crimes applicable for commercial legal entities prescribed in Paragraph 1 Article 76 of the Penal Code.

Though being stated in the statutory law, but since the Penal Code came into effect, the enforcement of criminal sanctions against legal entities in general and for intellectual property infringement, in particular, has not been stringently implemented, partly due to the lack of actual handling experience of state agencies.

However, this January, the People's Court of Phu Tho Province issued a first instance ruling for trademark infringement of a company. In this case, Viet Phap Aluminum Factory – Viet Phap Aluminum JSC (located in Dich Vong Hau Ward, Cau Giay District, Hanoi City) and its Director were prosecuted for using the term “Nhôm Việt Pháp SHAL”, similar to the protected trademark but unrelated under the trademark registration certificate of Viet Phap Aluminum Factory – Viet - Phap SHAL Aluminum JSC (located in Ninh Binh City, Ninh Binh Province).

Under the ruling of the First Instance Court on January 14, 2020, Viet Phap Aluminum Factory – Viet Phap Aluminum JSC (Hanoi) was fined 2 billion VND (about USD 86,300), and had to pay compensation to Viet Phap Aluminum Factory – Viet - Phap SHAL Aluminum JSC (Ninh Binh) for physical damage of VND 500 million (about USD 21,600) and spiritual damages of 15 million VND (approximately 650 USD).

The director of Viet Phap Aluminum Factory – Viet Phap Aluminum JSC (Ha Noi) was also fined VND 500 million and prohibited from holding the position for 18 months.

Although this is just a decision of the first instance court, has not yet come into effect and may be appealed or protested, this is also good news for intellectual property rights holders in Vietnam. Therefore, organizations and individuals should also pay attention to register for protection of intellectual property rights to protect their eligible rights, and not arbitrarily use the protected IP assets of others in business activities.

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

Best regards.

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