



Top Legal Minds, Strong Commercial Sense

Recommendations for precise determination of the market value of land

The Ministry of Natural Resources and Environment has recently issued the Draft Land Law (amended) for public comments to overcome the shortcomings and limitations of the Land Law 2013, and at the same time, add new policies to adjust some issues arising in reality.

Basically, the structure of the draft Law is similar to the current Land Law 2013, adding 2 chapters (one chapter on land fund development and separating the chapter on land acquisition, land requisition, compensation, and resettlement assistance into two chapters). The draft Law (amended) includes 237 articles, of which 48 articles remain unchanged; amends and supplements 153 articles; adds 36 new articles and removes 8 articles.

Regarding the content, the draft Law (amended) institutionalizes the goals, guidelines and solutions of the Central Committee's Resolution No.18-NQ/TW (“**Resolution 18**”), solving the problems in practice and development trends with many new points, especially the deletion of regulation on land price frame.

In this legal update, we will contribute our comments as well as our recommendations on certain issues related to the land price frames.

1. Status of applying land price frame regulations

The fact that the land price is assessed according to the framework, which is much lower than the actual value in the market, leads to the situation of overwriting land prices in land

use right purchase transactions. According to Article 17 of Circular No. 92/2015/TT-BTC¹ (“Circular 92”), tax on real estate transfer is 2% of the transfer price or sublease price. Taking advantage of this loophole, many people have overwritten the land prices for the purpose of tax evasion. To be more specific, the land price in the land use right purchase transaction, which is recorded in transaction documents submitted to competent authorities, is near the price in the land price frames and much lower than the actual transaction value, causing the decrease in the tax on real estate transfer applied to such people. As a result, the land price frames, which are established mainly based on land prices recorded from land use right purchase transactions, are continuously assessed far lower than the actual market land price.

Besides, the application of inappropriate land price frames also allows the existence of certain projects which are behind schedule as local people disagree with the compensation value for site clearance, which is much lower than the actual land value on the market. The fact that land price tables are now determined based on the land price frames according to Art. 114 of the Land Law 2013 are now used for the purpose of calculation of compensation amount upon land expropriation by the State. Therefore, the land price tables should be determined as closely as possible with the actual market land price.

Swing trading is another consequence of the land price frame regulation. That the land price frame is much lower than the actual market land price, together with the inappropriate tax regulations, leaves the swing traders a loophole to buy and purchase land use rights, causing land fever in certain areas and consequently ghost blooming projects.

In fact, there are now many abandoned projects and behind-schedule projects as the investors are not punished or are being punished not strictly enough. According to Art. 64 Land Law 2013, land that is allocated or leased for implementing investment projects is not used within 12 consecutive months, or the land use schedule is 24 months late compared with the schedule stated in the project documents since the hand-over in the field. In case of not putting the land into use, the land use term may be extended 24 months and the investors shall pay a sum of money equivalent to the total land use levy or land rental for the delayed period. In addition, such land user is required to file a written request for extension to the competent People’s Committee to allocate or lease such land parcel. These regulations should be amended as they have already allowed the existence of bribery when the said land users try to extend the land using time by bribing the competent authorities. These circumstances have exhausted the land fund while there is a great demand for accommodation from many people having average income and lower.

¹ Circular No. 92/2015/TT-BTC on Guidelines for vat and personal income tax incurred by residents doing business, amendments to some articles on personal income tax of the law No. 71/2014/QH13 on the amendments to tax laws and the government’s decree No.12/2015/NĐ-CP dated February 12, 2015 on guidelines for the law on the amendments to tax laws and decrees on taxation.

2. Recommendation of deleting the regulation on land price frames

To cover the unregulated issues that the deletion of land price frames leaves, it is necessary to promulgate an additional article in Land Law 2013 stipulating that: “*The People’s Committee of each province shall yearly develop the land price tables reflecting as closely as possible the market price*”. The fact that many developed countries in the world are now using this regime in which the land price tables are determined no lower than 80% of the actual market value of the land. In our opinion, the number of “80% actual market value” is a reasonable number which Vietnamese legislators can refer to it for inclusion in the Land Law.

3. Recommendations for precise determination of land market value

- (a) The tax on real estate transfer should be calculated based on the land price tables developed by the provincial People’s Committee. According to Circular 92, the tax on real estate transfer is now calculated based on the transfer price, which leaves the loophole for overwriting land prices in real estate transfer. Accordingly, the land transfers and transferee cannot evade the transferring tax by the action of overwriting the transfer price, consequently the situation of the two-price land transfer can be terminated.
- (b) In order to limit speculation and ensure equal access to land resources of each citizen, it is necessary to set forth legal provisions on land tax applicable in accordance with the purpose and quantity of land owned for each type of land user. To be more specific, the land use right should be applied as follows:
 - (i) Land use tax should be applied based on the value bracket of the land, which shall be initially promulgated by the competent authorities. Accordingly, land in developed places with high population density is properly more valuable and should be highly taxed.
 - (ii) Land use tax should be applied based on the purpose of land use. Accordingly, land used for luxury purposes such as golf courses, villas, high-class restaurants should be taxed highly. For example, Korea imposes an average tax level of 0.2 – 0.5% land value and higher tax level on luxury housing (e.g., 4% land value for golf courses land; or land for construction of luxury resorts may be taxed up to 250%). Besides, land used for the purposes of ensuring food security, environmental protection, and national defence... should be taxed at a lower rate or even not taxed.
 - (iii) Tax imposed on the land/house should be at a higher rate if such land/house is not the first land/house of the owner. In the UK, the government discourages people from owning or investing too much in real estate by separating two rates of land use/housing tax, the tax rate on the first house/land owned and the tax on the second house owned onwards.
 - (iv) Further, there should be regulation that restricts the number of lands used for certain purposes that a person is able to own.

- (v) Finally, it is necessary to apply tax reduction/exemption for policy beneficiaries (poor households, ethnic minorities, security purposes, food security, mining...)
- (c) In order to eliminate the situation of overwriting land prices, tax evasion or speculation, the publicity and transparency in the land use rights transfer is one of the most important issues which need insuring. Hence, the application of advanced science and technology is essential to ensure publicity and transparency in land use rights transfer, land allocation, and land leases. Below are our suggestions of the method which can be used to protect the publicity and transparency in land use rights transfer:
 - (i) Land price in land use right purchase transactions shall be public;
 - (ii) Land-related transactions must be conducted through real estate trading floors;
 - (iii) Payment land-related transactions must be conducted via bank; and
 - (iv) No cash payment is accepted in land-related transactions.
- (d) New regulations on recovery and fines for abandoned land projects and behind-schedule projects should be promulgated. Simultaneously, the authority to extend land use, instead of being delegated to the Provincial People's Committee, should be delegated to an independent authority that can ensure fairness in the allocation of land for the purpose of effective and rational exploitation of land resources.
- (e) Last but not least, the functions, duties, and responsibilities of the authorities in charge of land price determination should also be clearly stipulated. We would like to give certain suggestions as follows:
 - (i) The Central Committee shall take responsibility for developing criteria and procedures for inspecting and supervising localities in developing land price tables.
 - (ii) Provincial-level People's Councils decide, inspect and supervise the implementation of land prices
 - (iii) Besides, the new Land Law 2013 must (A) ensure the independence of the land price evaluating council, the capacity of the consulting organization to determine the land price, and the capacity and ethics of the valuers; and (B) supplement and complete regulations to maintain the publicity and transparency.

4. Conclusion

The above recommendations, together with the deletion of the land price frame, are suitable solutions that can adequately remedy the four issues in Part 1. When the market value of land is precisely determined, the land transferor and transferee, between the chance of evading a small amount of land use tax and the chance of being strictly sanctioned because

of overwriting transfer price for the purpose of tax evasion, will properly choose to submit the actual transfer price. Hence, the market value of the land can possibly be determined.

In summary, the above recommendations successfully ensure the people's equal right of access to land, bring the land price to its actual market value, and support the purpose of effective and reasonable exploitation of land in accordance with Resolution 18.

Key contacts

If you have any questions or would like to know how this might affect your business, please contact these key contacts.



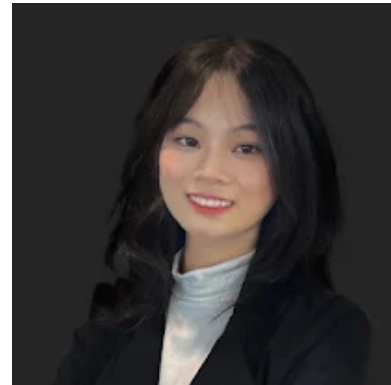
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