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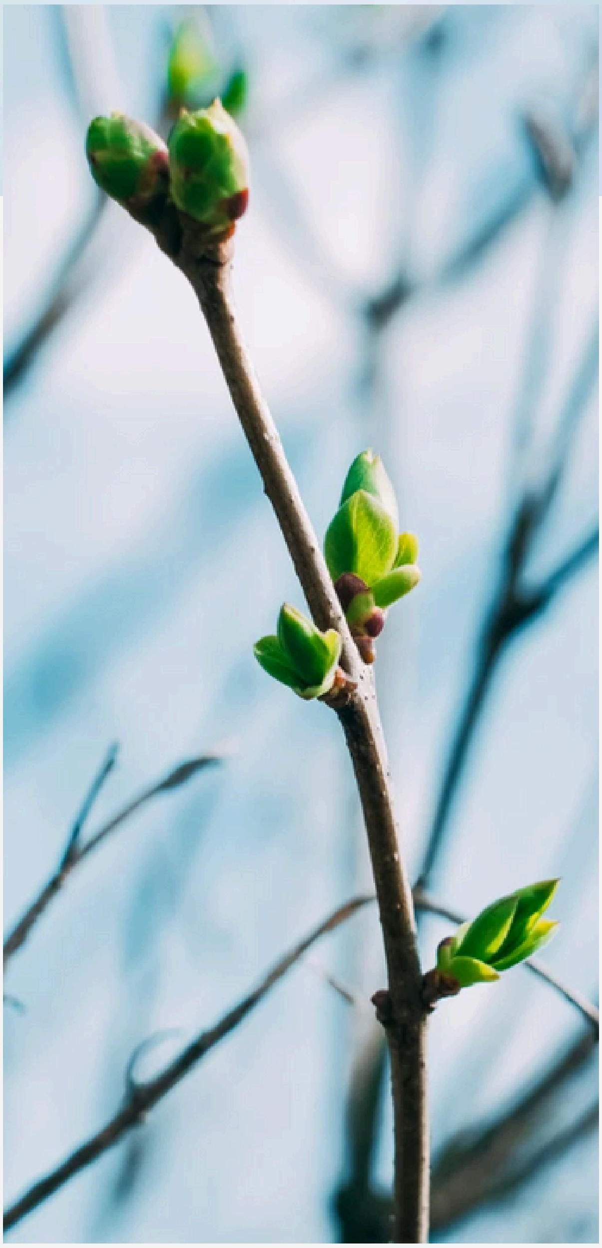

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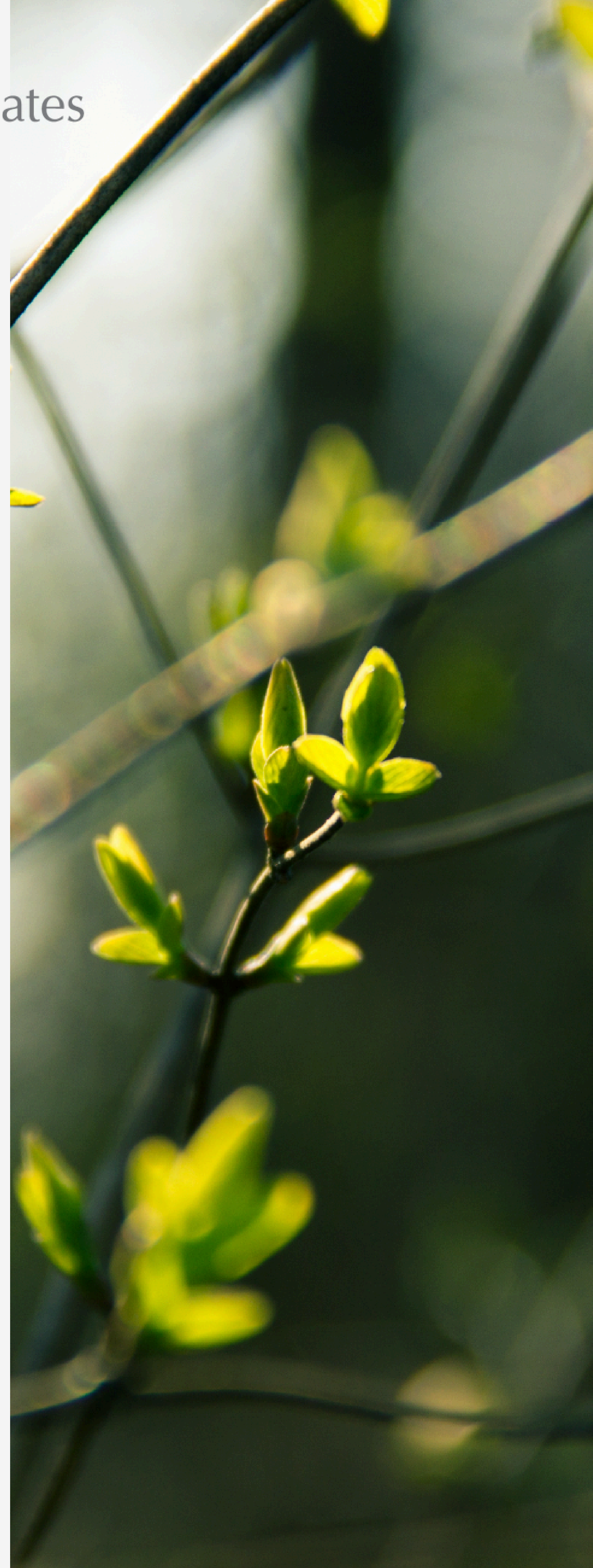

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AMENDMENTS TO REGULATIONS ON ENVIRONMENTAL IMPACT ASSESSMENT: SOME EFFECTS ON INVESTMENT PROJECT OWNERS

NGUYEN THI KIEU TRINH

On January 6, 2025, the Government promulgated Decree 05/2025/ND-CP, amending and supplementing several articles of Decree 08/2022/ND-CP (**Decree 08**) dated January 10, 2022 on elaboration of certain articles of the Law on Environmental Protection 2020 (**EP Law**) (**Decree 05**). Decree 05 took effect on January 6, 2025 with several amended and supplemented regulations related to environmental impact assessment (**EIA**). According to the EP Law, EIA is the process of analyzing, evaluating, identifying, and forecasting environmental impacts of an investment project and proposing measures to minimize adverse environmental impacts. The amendment and supplementation of EIA regulations in Decree 05 will affect a number of projects for which EIA must be conducted, including:

(i) Group I investment projects which *pose a high risk of adverse environmental impacts* as prescribed in clause 3, Article 28 of the EP Law, for example: Projects requiring conversion of land use purposes of medium scale at least with environmentally sensitive factors; Large- or medium-scale projects using land, land with water surface, sea areas with environmentally sensitive factors, and so on (The list of these investment projects is specified in *Appendix III, Decree 08*).

(ii) Some Group II investment projects which *pose the risk of adverse environmental impacts* as prescribed in points c, d, dd, e, clause 4, Article 28 of the EP Law, for example: Medium- or small-scale projects using land, land with water surface, sea areas with environmentally sensitive factors; Small-scale projects requiring conversion of land use purpose with environmentally sensitive factors, etc. (The list of these investment projects is prescribed in *Appendix IV, Decree 08*).

As an important new point in Decree 05, *the projects subject to EIA are modified and supplemented in the List of Group I investment projects and the List of Group II investment projects (specified in Appendix III, Appendix IV of Decree 08)*, typically:

- **For the List of Group I investment projects with a high risk of adverse environmental impacts**: Decree 05 removes some projects from the List such as Group A projects with construction components classified according to criteria prescribed by law on public investment, construction and subject to the type of production, business and services with a risk of causing environmental pollution; projects with sea

encroachment activities; projects that generate wastewater.

- **For the List of Group II investment projects with the risk of adverse environmental impacts**: the projects that generate wastewater are removed from the List.

In addition, Decree 05 amends and supplements several regulations on consultation in EIA to strengthen this activity. Specifically, for consultation activities of the residential community and individuals directly affected, instead of merely requiring the investment project owner to coordinate with the Communal People's Committee of the locality where the project is implemented to notify the time and place of the consultation meeting as before, Decree 05 mandates the investment project owner to coordinate with the Communal People's Committee *to send invitations* to the entire residential community and individuals directly affected to attend the consultation meeting. In the case where they do not attend the consultation meeting, their opinions must be collected in writing through sending ballots instead of organizing an in-person meeting as prescribed in Decree 08 previously. Decree 05 also adds a requirement that the number of people attending the consultation meeting and having been consulted through sending ballots must be at least two-thirds of the total number of directly affected people.

In addition, Decree 05 amends and supplements the regulations on responsibilities of project owners to implement EIA during the preparation and execution of investment project before operation upon any change as compared to the decision on approval of EIA report appraisal result. Compared to Decree 08, Decree 05 defines the cases where EIA is required more clearly. For example, Decree 05 stipulates (i) specific cases with an increase by 30% or more in the scale of and capacity for production, business, or services; (ii) the consequences of their adverse impacts on the environment (increasing total wastewater flow or total dust and emission volume discharged to the environment when the project officially comes into operation; increasing adverse impacts on biodiversity or biodiversity loss, etc.). Moreover, in the case where there is a change in the project but no need to undergo EIA, Decree 05 has added the responsibility of the investment project owner in updating and self-assessing the environmental impact to adjust and supplement the project's EIA report, thereby serving the environmental inspection, supervision, and licensing of competent state agencies.

Decree 05 is issued to create more favorable conditions in implementing new policies of the EP Law, contributing to improving the investment and business environment, and supporting businesses' recovery after the Covid-19 pandemic. During implementation of Decree 05, investors with projects subject to EIA as prescribed in this Decree should pay attention to the transitional regulations on EIA in Article 5 to ensure compliance and protect their legitimate rights and interests. In the case that you have any queries or concerns regarding the new regulations of Decree 05 as well as EIA-related investment issues, contact NHQuang&Associates for advice and assistance.

STREAMLINING ADMINISTRATIVE PROCEDURES FOR INVESTORS THROUGH THE APPLICATION OF THE SPECIAL INVESTMENT PROCEDURE

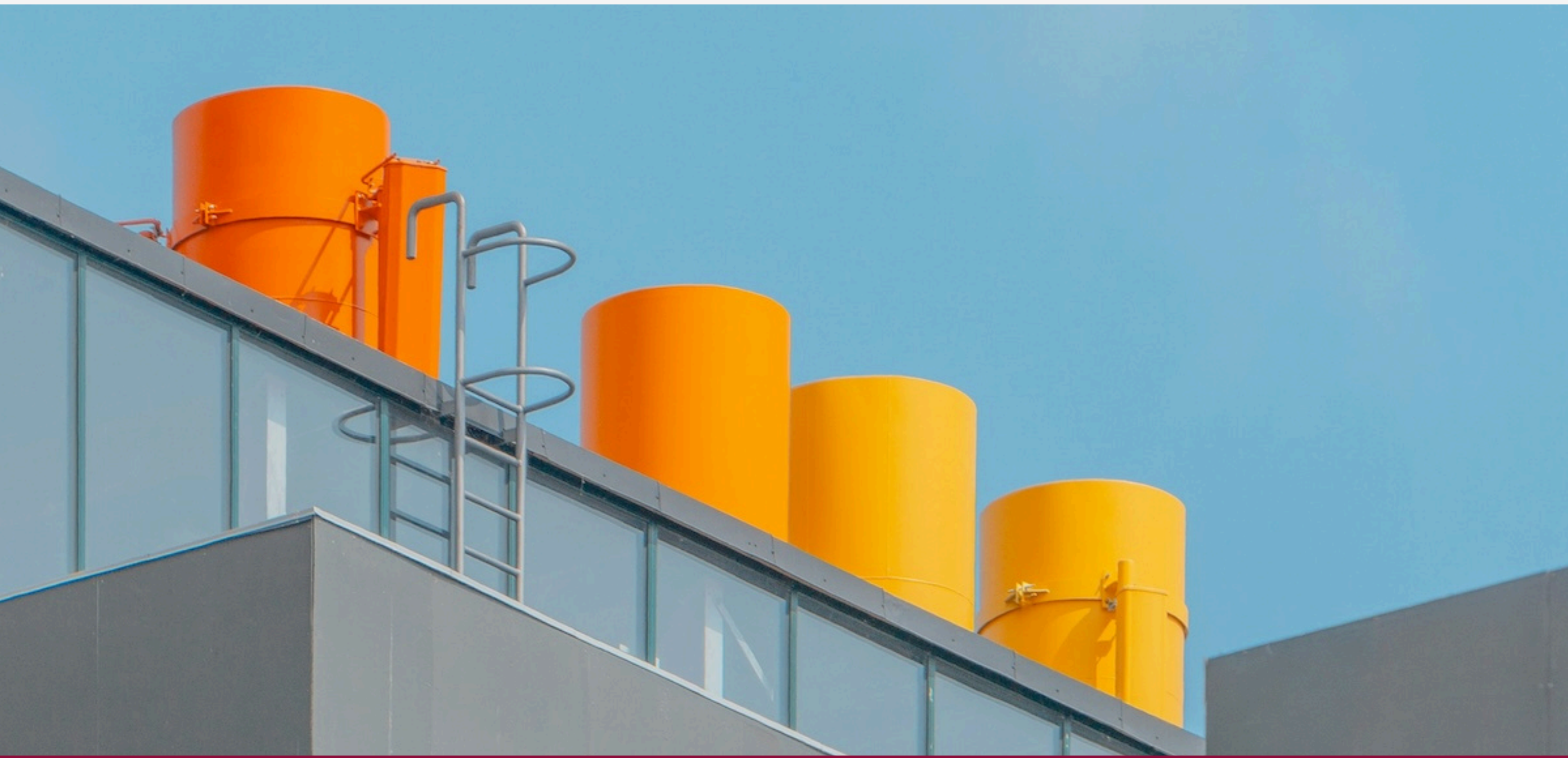
TANG MY NGAN

Within the scope of the Law on Investment 2020 amended in 2024, Article 36a has been updated to stipulate the groups of investment projects eligible for registering under special procedure upon satisfaction of specific conditions. Accordingly, from January 15, 2025, investors implementing projects regulated by the new procedure will be entitled to more preferential policies as many licenses and administrative procedures related to investment policy approval, environment, construction planning, fire prevention and fighting, and a number of other procedures under law are eliminated. Special investment procedure is applied to projects in industrial parks, export processing zones, high-tech parks, concentrated information technology parks, free trade zones and functional areas in economic zones in the following fields (except for projects under Article 30 of the Law on Investment 2020):

(i) Investing in building innovation centers, research and development (R&D) centers;
(ii) Investing in semiconductor integrated circuit industry, design technology, manufacture of components, integrated circuits (IC), flexible electronics (PE), chips, semiconductor materials;
(iii) Investing in high-tech fields which are given priority in investment development, in manufacture of products in the list of high-tech products encouraged for development according to the Prime Minister's decision. Investment projects in high-tech zones must meet the principles and criteria for projects implementing high-tech activities according to the Law on High Technology and the Government's regulations on high-tech zones.

In order to provide specific guidance for implementation of the above regulations, on February 10, 2025, Decree 19/2025/ND-CP detailing the Law on Investment regarding special investment procedure (**Decree 19**) was issued with effectiveness from the date of issuance. Some notable contents related to special investment procedure set forth in Decree 19 include:

Firstly, Decree 19 stipulates the implementation of the registration procedure for investment certificates of investment projects under special investment procedure. According to the normal investment registration procedure in the Law on Investment 2020, when applying for an investment certificate, investors



need to implement administrative procedures on environment, construction, and fire prevention and fighting. The special investment procedure simplifies the implementation of the above administrative procedures, only requiring the investors to commit to meeting the conditions, standards, and relevant technical regulations pursuant to the provisions of the law on construction, environmental protection, fire prevention and fighting, not to performing acts prohibited by relevant laws in these fields, and to taking full responsibility in case of failure to implement the commitment properly. The commitment content is stated in the written proposal for implementation of the investment project.

To apply for an Investment Registration Certificate, the investor shall submit one set of application dossier for Investment Registration Certificate to the Management Board of the relevant industrial park, export processing zone, high-tech zone, economic zone (hereinafter referred to as the Management Board). Within 15 days from the date of receipt of the dossier, the Management Board shall evaluate and issue the Investment Registration Certificate.

Secondly, in addition to the obligations to guarantee the implementation of investment projects in Article 43 of the Law on Investment 2020, Article 25, Article 26, Decree 31/2021/ND-CP, an investor following special investment procedure needs to carry out a number of additional procedures to guarantee the implementation of projects according to Decree 19 as follows:

The investor chooses to implement one of two methods (i) make the required deposit or (ii) submit a guarantee commitment from a credit institution to guarantee the fulfillment of deposit-related obligations. The time when the guarantee is made will be flexible depending on each case: (i) The investor does not make any advanced payment of compensation, support and residential resettlement costs; (ii) The investor has made advanced payment of compensation, support and residential resettlement costs; (iii) The project is located in a land area appropriated by the State after having made full payment of compensation, support and residential resettlement costs.

The refund of amounts paid for guarantee of project implementation obligations is divided into 2 phases as follows:

(i) At the time the investor sends the Management Board a notice on commencement of construction and the documents stipulated under clause 8 Article 36a of the Law on Investment 2020, amended and supplemented in 2024: 50% of the deposit amount will be refunded; or the sum in the guarantee for fulfillment of deposit-related obligations shall be reduced by 50%;

(ii) At the time the investor sends the Management Board the acceptance minutes of construction work completion, the remaining deposit amount and any interest thereon will be refunded; or the guarantee for fulfillment of deposit-related obligations shall cease.

Thirdly, investors need to pay attention to notify and implement a number of procedures before and during the implementation of investment projects according to the special procedure in a number of specific cases, specifically as follows:

(i) Sending notices on commencement of construction together with the Economic - Technical Report on Construction Investment, Report on the appraisal results of the Economic - Technical Report on Construction Investment to the local competent state agency on construction order management and the Management Board at least 30 days before commencement of construction: applied to investment projects with construction components.

(ii) Implementing procedure for obtaining an Environmental License (if required) before starting construction at the competent state agency: the relevant order and procedure shall comply with the provisions of the law on environmental protection applicable to investment projects that are not subject to environmental impact assessment.

In general, the new provisions of the law on investment have created a premise for projects in the group entitled to special investment procedure to shorten the time for project implementation in practice by streamlining many component procedures during the investment process. According to the assessment of the Ministry of Planning and Investment, the time limit for registration procedure of investment projects under special investment procedure is only 15 days, 260 days shorter than that for normal investment registration procedure. This is considered a breakthrough in investment licensing, expected to attract investors in the high-tech sector.

Therefore, enterprises planning to implement investment projects in the fields eligible for the application of special investment procedure need to update the provisions of Decree 19 so as to implement investment projects more effectively, quickly. Moreover, it is necessary to pay attention to the transitional provisions in Article 9 of the Decree related to the settlement of investment project dossier received before January 15, 2025 but without results for compliance with the regulations. In the case that you have any queries or concerns regarding the new regulations of Decree 19, contact NHQuang&Associates for advice and assistance.

DRAFT GUIDELINES ON TAX DEDUCTION AND PAYMENT OBLIGATIONS OF ORGANIZATIONS MANAGING E-COMMERCE TRADING FLOORS AND DIGITAL PLATFORMS

DANG HUYEN THU

E-commerce activities have been essentially affecting countries' economic growth, including Vietnam. To improve tax management and create resources for socio-economic development through expanding the scope of tax collection and preventing tax losses, the National Assembly has adjusted several contents of the Law on Tax Administration 2019 related to business activities on e-commerce platforms and digital platforms in Law 56/2024/QH15 dated November 29, 2024 amending and supplementing several articles of nine Laws. Accordingly, from April 1, 2025, organizations managing e-commerce trading floors, digital platforms *with payment functions* (including domestic and foreign organizations) and organizations with other digital economic activities as prescribed by the Government must *deduct, pay taxes and declare the deducted tax amounts on behalf of* business households and individuals with business activities on their e-commerce platforms and digital platforms.

To provide more specific guidance on this content, the Ministry of Finance is developing and collecting comments on the Draft Decree regulating tax management for business activities on e-commerce platforms and digital platforms of business households and individuals (as of February 28, 2025) (**Draft Decree**). The Draft Decree specifies the responsibility of organizations managing e-commerce trading floors, digital platforms with payment functions, and organizations with other digital economic activities to deduct and pay taxes on behalf of business households and individuals (**organizations managing e-commerce platforms that are subject to tax deduction and payment on behalf of business households and individuals**). The Draft Decree includes several contents such as the scope of tax deduction and payment on behalf of business households and individuals; the time of tax deduction, determination of deducted tax amounts; the method for declaring and paying deducted taxes. Below are some specific analyses related to these contents:

Firstly, regarding the scope of tax deduction and payment on behalf of business households and individuals, the Draft Decree stipulates that domestic and foreign organizations managing e-commerce platforms that are subject to tax deduction and payment on behalf of business households and individuals (including owners directly managing e-commerce platforms or persons authorized to manage e-commerce platforms) will deduct and pay *value added taxes* and *personal income taxes* on behalf of business households and individuals residing in Vietnam and non-resident individuals (in Vietnam) with business activities on e-commerce platforms, digital platforms, and other digital economic activities (**e-commerce platforms**), specifically:

- *Regarding value added tax*: Deducting and paying the value added tax payable on behalf of business households and individuals according to laws on value added tax for each transaction of goods and service provision *generating revenue domestically* of both business households, individuals residing in Vietnam, and non-resident individuals with business on e-commerce platforms;
- *Regarding personal income tax*: Deducting and paying the personal income tax payable on behalf of business households and individuals according to laws on personal income tax for each transaction of goods and service provision *generating revenue domestically and internationally of business households and individuals* residing in Vietnam with business on e-commerce platforms and each transaction of goods and service provision *generating revenue domestically of non-resident individuals* with business on e-commerce platforms.

Secondly, regarding the time for deduction and determination of deducted tax amounts, the Draft Decree stipulates that domestic and foreign organizations managing e-commerce platforms that are subject to tax deduction and payment on behalf of business households and individuals must deduct taxes *before transferring payments by buyers to business households and individuals*. Also, the determination of the deducted tax amounts will be based on the *percentage (%) of revenue of each completed transaction*. According to the Draft Decree, for both business households, individuals residing in Vietnam and non-resident individuals with business on e-commerce platforms, the value-added tax rate applicable to goods is 1%, to services is 5%, and 3% for transportation or services attached to goods. Regarding personal income tax, resident individuals are subject to a tax rate of 0.5% for goods, 2% for services and 1.5% for transportation or services attached to goods; meanwhile, non-resident individuals will be subject to tax rates of 1%, 5% and 2%, respectively for the respective types of business.

Thirdly, regarding tax declaration method, the Draft Decree stipulates that organizations managing e-commerce platforms will *declare deducted tax amounts monthly* according to laws on tax administration. Domestic organizations will be granted a separate tax code (10-digit tax code) to declare and pay the deducted tax amounts on behalf of the relevant subjects. For foreign organizations managing e-commerce platforms, a 10-digit tax code will be issued, which is similar to the regulations for foreign suppliers. In addition, the Draft Decree also stipulates the list of the documents as well as the method for declaring and paying deducted tax amounts. The Draft Decree also sets out several other responsibilities of organizations managing e-commerce platforms such as registering to use electronic tax deduction documents, issuing tax deduction documents electronically to business households and individuals, and storing business transaction data according to laws on tax administration.

In addition, the Draft Decree also stipulates the declaration and payment of taxes by business households and individuals with business on e-commerce platforms, but these platforms are *not subject to performing tax deduction or payment on their behalf* (e-commerce platforms and digital platforms *do not have payment functions*). Accordingly, business households and individuals doing business on such e-commerce platforms will directly declare and pay value added taxes, personal income taxes, and other revenues. Tax declaration can be made monthly or upon each occurrence depending on the form and frequency of business through the General Department of Taxation's Electronic Portal.

The Decree regulating tax management for business activities on e-commerce platforms and digital platforms of business households and individuals, once issued, will contribute to creating a transparent and fair business environment between traditional business types and e-commerce and digital platform businesses. It will also improve the quality of state management in the context of increasingly developing e-commerce and digital platform businesses. This Decree is expected to have a strong impact on organizations managing e-commerce trading floors, digital platforms with payment functions, and organizations with other digital economic activities. Therefore, these organizations should study the contents of the Draft Decree and its updates and changes (if any) to ensure compliance with the law when the regulations come into effect.