RESPONDEK & FAN

LEGAL E-BULLETIN

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Dear Reader,

The new Vietnamese regulations regarding Personal Income Tax are a hotly debated topic in Vietnam affecting both foreign and Vietnamese employees. The impact on foreign employees is especially strong, as some perks and benefits under the employment contracts that used to be entirely tax free are now considered as taxable benefits. The various recent decrees and circulars are trying to clarify unresolved issues. Further official guidance on the new Personal Income Tax Law can be expected in due course and we will keep you certainly updated.

If you have any comments, remarks or questions, we'd love to hear from you. Please contact me at +65-6324-0060 or by email (respondek@rflegal.com).

Kind regards,
RESPONDEK & FAN
Andreas Respondek
Managing Director

VIETNAM: NEW INCOME TAX REGULATIONS

The new "Law on Personal Income Tax" supersedes the "Ordinance on Personal Income Tax" which was promulgated at the end of year 2007 and came into effect on January 1st 2009 together with a series of guiding regulations that have attracted great attention of both Vietnamese and foreigner nationals currently working in Vietnam.

We hereinafter would like to introduce some major features that may be of concern to foreign investors in Vietnam in accordance with the following recently issued legal documents:

- **Personal Income Tax Law** dated 27 November 2007, adapted by the National Assembly, taking effect as of 01 January 2009 ("***PIT Law***");
- **Decree 100/2008/ND-CP** dated 08 September 2008 of the Government providing details guiding the provisions of the PIT Law, effective 01 January 2009 ("***Decree 100***");
- **Circular 84/2008/TT-BTC** dated 30 September 2008 of the Ministry of Finance providing further guidance and clarification for the application of Decree 100 ("***Circular 84***");
- **Circular 62/2009/TT-BTC** dated 27 March 2009 of the Ministry of Finance providing further guidance and clarification for the application of Circular 84 and also canceling any provisions and guidance of Circular 84 inconsistent therewith.

1. Tax payers: introduction of the new concept of tax residents

The new rules on tax residency in Vietnam are outlined in this "Decree 100". In addition to the rule of a tax payer's physical presence in Vietnam for more than 182 days in a 12 months period, there is a new rule defining the term "resident", which is either: *registered as "permanent resident" in Vietnam*; or, *having a house rent contract for 90 days or more in a taxable year*. That is to say, an expatriate who is present in Vietnam for less than 183 days in a tax year, but who has a rented house for a term of at least 90 days in such a year, will also be deemed as a Vietnamese tax resident. And certainly, any Vietnamese nationals who fall in the category of having a permanent registered address in Vietnam - regardless of working abroad or in Vietnam - are deemed to be tax residents.

2. Taxable income:

The PIT law is applicable to the following sources of income (hereinafter referred to as "***taxable income***"), i.e. income from:

- business, income from salary, wage;
- capital investment (such as loan interest, dividend and other forms except interest income from Government Bonds);
- capital transfers (including income from capital transfers of business organizations, income from transfers of securities and other forms);
- transfer of real estate;
- royalty;
- commercial franchising;
- inheritance income;
- gifts being securities certificates; and
- dividend income.

3. Non-taxable employment income:

The Ministry of Finance has recently released a new PIT Circular 62, dated 27 March 2009, which makes a number of changes to the PIT regime. Circular 62 also makes a number of clarifications of the previous Circular 84. Circular 62 came into effect in mid-May, but will apply to all income generated from 01 January 2009 onwards.
The new regulations clearly confirm that income in

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any form and benefits in cash or in kind including accommodation provided by employers are fully taxable. However, after several consideration and amendments of the law-makers, tax exemptions are finally restored for:
- One-off-relocation allowances for the expat
- Annual airfare for the expat to visit home
- Expat's children's education
- Training that is related to the employee's duties

Therefore, the items related to employment income that are non-taxable can be listed as follows:

- One-off relocation allowance for expatriates coming to reside in Vietnam is not taxable. The amount is determined based on the labour contract.
- School fees for children of expatriate employees up to high school level are not taxable based on provisions of labour contract.
- Airfares for one round trip home leave for expatriates is non-taxable with the condition that the airfare provision is mentioned in the labour contract and the ticket indicates the country where the expatriate resides or where his family resides.
- Housing allowance paid by the employer on behalf of the employees is taxable based on the actual expenses but not exceeding 15% of total taxable income.
- Provision of a motor vehicle for collective use is not taxable. However, the benefit is taxable if the use of the motor vehicle is for a specific individual.
- For other benefits such as club memberships, recreational services, PIT will apply only if the payment for membership or for the service is for specific individuals, i.e. the benefit is not taxable if the payment is for the collective use of a number of employees.
- Training expenses for knowledge and improvement of skills of employees consistent with their profession, or in accordance with the company's plan of labour utilisation, is non-taxable.
- Midshift meal is not taxable if the employer directly organises meals for the employees. In case the employer directly pays midshift meal allowance in cash to the employees in excess of the amount stipulated by the Ministry of Labour, War Invalids and Social Affairs, the exceeding amount shall be included in the taxable income.
- Per diem expenses for stationery, utilities, travelling will not be taxable if the expenses are in accordance with the current regulations of the State.

4. **Deductions from income before computing personal income tax:**

Before personal income tax calculation, with regard to income from wage and salary, the following types of deductions are eligible according to the laws:

(1) Health and Social Insurance Contributions; other compulsory insurance contributions (if any);

(2) Reduction for family conditions:
Reduction of 4 million VND/month to individual which is subject under personal income tax; reduction of 1.6 million VND/month is applied to each dependent person, who do not necessarily live under the same house with the tax payer; and

(3) Reduction for contributions to charity funds or humanitarian aid.

5. PIT rates

(i) PIT rates of partial progression are applied to the income from business, salary, wages (excluding social and health insurance premium). The rate of PIT is provided below as follows:

No.	Taxable monthly income (VND)		Rate (%)
	From	To	
1	0	5,000,000	5
2	Over 5,000,000	10,000,000	10
3	Over 10,000,000	18,000,000	15
4	Over 18,000,000	32,000,000	20
5	Over 32,000,000	52,000,000	25
6	Over 52,000,000	80,000,000	30

(ii) PIT rate of full progressive is applied to the income from capital investment, capital transfers, property transfers, lottery, royalty, trading concession, inheritance and gift. The rate of PIT is provided below:

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Sources of Income	Rate (%)
a) Income from capital investment	5
b) Income from royalty, trading concession	5
c) Income from lottery	10
d) Income from inheritance and gifts	10
e) Income from differences in the costs of capital transfers (based on the difference between selling price and buying price)	20
f) Income from transfers of securities (based on selling price)	0.1
g) Income from differences in the cost of property transfers (based on the difference between the selling cost and buying price)	25
h) Income from property transfers (based on selling price)	2

(iii) PIT rates for non-resident individuals in Vietnam

The resident individuals will be applied the PIT rate of partial progression or full progression as below:

Income	Rate (%)
a) Income from business:	
Revenues from goods trading;	1
Revenues from provision of services;	5
Revenues from activities of manufacturing, construction, transportation and other business.	2
b) Income from salary, wages	20
c) Income from capital investment	5
d) Income from capital transfer (based on selling price)	0.1
e) Income from property transfers (based on selling price)	2
f) Income from royalty, commercial franchising (over 10 million VND/contract)	5
g) Income from lottery, inheritance and gifts (over 10 million VND/time)	10

Application of the PIT Law and its guiding provisions:

Due to significant changes in the nature as well as procedures of the new PIT Law and on the other hand, to encourage all sectors of the economy, on 06 February 2009, the Ministry of Finance issued Circular 27/2009/TT-BTC ("***Circular 27***") providing guidelines on the deferral of Personal Income Tax ("***PIT***") payments under the new PIT Law and its relevant guiding documents.

Accordingly, PIT payments on the following types of income received by individual tax payers during the period from 01 January 2009 to 31 May 2009 can be deferred:

- Tax-residents can defer PIT payments on income from private business activities, salaries, wages (including allowances and benefits paid by employers), income from capital investment and transfers (including securities trading), income from royalty and franchising.
  Income for which PIT payments are **not** permitted to defer comprise income from real property transfer, gaming prizes, inheritance, and gifts.
- Non-tax-residents shall be entitled to PIT payment deferral only on Vietnam sourced income from capital investment and transfers, income from royalty and franchising.
  Non-tax-residents are **not** permitted to defer PIT payment regarding income from salaries, wages and other employment incomes.
  During the deferral period, no fine, penalties or interest on late payment shall be imposed on either the withholding organization or individual tax payers.

PIT Filings during the Deferral Period

During the deferral period, both the income paying organizations and individual tax payers who directly file tax returns with the tax authorities are still required to declare and submit PIT returns to the tax office as usual.

At the end of the deferral period, pending on the decision of the National Assembly to be expected shortly, the MoF will provide further guidance on the treatment of the deferred PIT payments.

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