

Vietnam News Brief*

A special update on Personal Income Tax ("PIT") in Vietnam

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NEW PERSONAL INCOME TAX DECREE

Following the passing of Vietnam's first PIT Law in late 2007, the Government has now issued the implementing PIT Decree. By way of background, in Vietnam tax laws are implemented by a decree and circular. The most detailed regulation is the circular which will be issued by the Ministry of Finance - this is still being drafted.

Decree 100/2008/ND-CP was issued on 8 September 2008 and will be effective 15 days after being published in the official gazette. However, it will only apply to the declaration and payment of PIT from 1 January 2009, the date on which the new PIT law comes into effect.

Decree 100 restates many of the provisions contained in the PIT Law - please refer to our NewsBrief dated 22 November 2007 for a summary of the key changes included in the PIT law itself. These include the schedule of PIT rates and income bands (which are equally applied to both Vietnamese and foreigners), personal and dependent allowances, and the inclusion of non-employment into the scope of PIT.

However the Decree also sets out more detail on how the PIT law will be applied. We outline below some of the key new provisions arising from Decree 100.

1. Who is liable to PIT?

The tax residency definition is expanded to include individuals having permanent residency in Vietnam or renting a residential house in Vietnam with a term of 90 days or more in a tax year.

As before, tax residents will be subject to PIT on their world-wide employment income, regardless of where it is earned, paid, received or charged. Tax non-residents will be subject to PIT on income earned in Vietnam, even if they are not present in Vietnam in a tax year.

2. What is taxable?

Employment income

- Benefits in kind are taxable and Decree 100 makes specific reference to certain taxable benefits, including non-mandatory insurance contributions, membership fees, health care, entertainment, etc. It also contains a catch all "other benefits in kind".

The exemptions from PIT that are contained in the current PIT regulations are not mentioned in the new PIT Law or Decree 100. Accordingly, it is appearing increasingly likely that the current exemptions from PIT on benefits such as airfares, school fees and also the concessional taxation of employer provided housing, will not be retained into 2009.

- Reference is made in Decree 100 to stock awards being a taxable bonus in kind (consistent with the current treatment outlined in various Official letters). There is one further reference to stock options within the Decree, but an absence of detailed guidance in relation to how stock based remuneration will be taxed.

Non employment income

- Further guidance is provided in respect of each kind of non employment income. The following types of income will be taxable for the first time in Vietnam:
 - rental income;
 - investment income (e.g. interest - except on bank deposits and life insurance policies, dividends);
 - gains on shares;
 - gains on sale of real estate;
 - inheritance in excess of VND 10 million
- Various annual personal allowances will be allowed as follows:
 - single personal allowance: VND 48m/annum.
 - additional allowance per dependent: VND1.6m/month if required supporting documents are met. Required supporting documents will be set out in the forthcoming Circular.

3. When is income taxable?

- The Decree includes some limited guidance on when income will be recognized for PIT purposes. This will be when employers pay wages or salaries, or when the taxpayer receives income. It also specifies the timing of recognition of certain non-employment income.

4. Tax filing and administration

- Under the current PIT regulations there are two filing methods – direct filing and withholding method. Decree 100 provides additional guidance with respect to administrative procedures and it seems likely that the direct filing method will no longer be available. This removal may provide challenges with respect to employers wishing to segregate the PIT filings of Vietnamese and expatriate employees.
- Consistent with the current PIT regulations, PIT administration for employers in 2009 is likely to comprise a monthly withholding and declaration of PIT and finalization at year end.
- For individuals/employees without a labour contract, a withholding tax of 10% shall apply, but increasing to 20% if the individual does not have a tax code.
- Reflecting the widening in scope to include non employment income, individual taxpayers must also finalize tax themselves at year end, but only in situations where they derive income that has not otherwise been taxed (generally by way of a withholding mechanism) throughout the year.