

Tax Alert

VIETNAM

August 2009

Detailed guidance on Personal Income Tax (PIT) exemption for 2009 and further instructions of PIT Law compliance for the last 6 months of 2009 issued

On 12 August 2009, the Ministry of Finance issued Circular No. 160/2009/TT-BTC (Circular 160) to provide detailed guidance on PIT exemption in 2009 under Resolution No.32 of the National Assembly. Below are the key points under Circular 160:

1. Qualifying individuals and exemption periods

Circular 160 reaffirms qualifying individuals and tax exemption periods, particularly:

- Resident individuals having income derived from business activities, income from salaries and wages, income from inheritance, and income from gift receipts will be entitled to PIT exemption for the period from 1 January 2009 to 30 June 2009 inclusive.
- Resident and non-resident individuals having income derived from capital investments and capital transfers (including securities transfers), income from royalty and franchising will be entitled to PIT exemption for the period from 1 January 2009 to 31 December 2009 inclusive.



2. Determination of qualified income for PIT exemption

The basis for recognising income qualified for PIT exemption is now clearly stated. Accordingly, income entitled to PIT exemption shall be the income entitled to PIT deferment in the first 6 months of 2009 and taxable income derived during the period of PIT exemption.

PIT exemption is specified for various types of income as follows:

2.1 With respect to income from salaries and wages:

Under Circular 160, salaries and wages which an income-paying body must pay to the individuals during the first 6 months of 2009 will be exempt from tax, regardless of the time of payment. In particular:

- Salaries and wages of the first six months of 2009 actually paid to employees during the 1 January 2009 – 30 June 2009 inclusive period based on the employment contract or salary payment decision, shall be exempt from tax;
- Salaries and wages derived from the first six months of 2009 in accordance with the employment contract, which have been recorded in the income-paying body's books or approved for payment but have not been paid to employees before 30 June 2009, shall be exempt from tax. However, such income must be paid out no later than 31 December 2009;
- 50% of the bonus payments for the whole 2009 such as year-end bonus, 13th month salary, etc shall be exempt from tax. Such income must be paid out no later than 31 March 2010;
- The entire bonus amounts of Quarter I and Quarter II of 2009 as decided by the paying-body shall be tax exempt. Such income must be paid out no later than 31 December 2009;
- Other income items such as holiday allowances, vacation allowances, uniform allowances and other benefits paid during the period from 1 January 2009 to 30 June 2009 inclusive shall be exempt from tax;
- Of note, salaries and wages derived from 2008 but paid to the employees during the period from 1 January 2009 to 30 June 2009 inclusive are also entitled to PIT exemption.

Accordingly, under this Circular, it can be understood that 2008 Tet bonus already declared for PIT deferment in the first six months of 2009 should now be exempt from tax as well.

2.2 With respect to other incomes:

Basically, the basis to determine the qualified income entitled to PIT exemption for business income, income derived from capital investments and capital transfers (including securities transfers), income from royalty and franchising shall be applied in accordance with the respective periods of PIT exemption period for each type of income, particularly:



- For self-employed individuals who adopt reliable accounting systems, income entitled to PIT exemption shall be the income corresponding to revenues and expenses derived in the first 6 months of 2009;
- For self-employed individuals who have business operations for 12 full months in 2009 but could not determine the exact income amounts derived in the first six months of 2009, the income entitled to PIT exemption shall be equal to 50% of the taxable income of 2009;
- For self-employed individuals who have business operations for less than 12 months in 2009 and could not determine the exact income amounts derived in the first six months of 2009, the income entitled to PIT exemption shall be determined based on the ratio between the actual revenues in the first six months and the total revenues of the whole year 2009;
- For self-employed individuals who only report revenues and fail to report expenses, the income entitled to PIT exemption will be the deemed income based on the declared revenues for the first six months and the deemed percentage of taxable income;
- For self-employed individuals who pay PIT on a deemed basis, the PIT to be exempted will be the deemed tax payable for the first six months of 2009 as per the tax notice;
- For income derived from capital investments and capital transfers (including securities transfers), income from royalty and franchising, income from inheritance, and income from gift receipts, the income amount entitled to PIT exemption shall only be the income portion of 2009, even if the individuals receive their income for other years in advance.

Please note that to qualify for tax exemption, income derived from capital investments and capital transfers (including securities transfers), income from royalty and franchising must be paid out no later than 30 June 2010.

3. 2009 PIT declaration and finalisation

With respect to procedures for 2009 monthly declaration and finalisation of PIT, income-paying bodies and individuals who directly declare with the tax authorities should notice the following:

- Income-paying bodies are not required to make monthly declarations for salaries and wages entitled to PIT exemption, if these incomes are paid after 1 July 2009.
- Income-paying bodies are not required to finalise the income entitled to PIT exemption. Specifically, income-paying bodies are only required to finalise for the income and deducted PIT liabilities derived during the period from 1 July to 31 December 2009 rather than for the income entitled to PIT exemption in the first six months of 2009.
- Resident individuals having income derived from business activities, income from salaries and wages are only required to finalise their 2009 PIT if their tax payables of the last six months of 2009 are higher than the deducted PIT amounts or if they request PIT refund or net-off.
- Amounts of compulsory insurance contribution, family relief deductions, charitable or humanity contributions, etc shall be claimed on the actually incurred amounts for the last six months of 2009 only. In case these contributions have been paid for the whole year of 2009, only half of the total actual contribution is allowed to be claimed for tax purposes.

4. Effective date of Circular 160

This Circular shall come into effect within 45 days after its signing date. Notwithstanding this, Circular 160 provides that in case income-paying bodies and individual tax payers have applied tax paying methods other than those provided therein, they will need to make adjustments to comply with the provisions of Circular 160. Particularly:

- For employers who already withheld PIT amounts on tax exempt incomes, they are required to refund these withheld amounts to the individual tax payers.
- For individuals who already declared and paid tax for the income entitled to exemption, they can now claim a tax refund or net-off against the tax liability for subsequent tax periods.

5. Areas pending clarifications

As it stands today, a few areas remain unclear and seem to require further guidance from the tax authorities, including the basis for determining the origination of the wages and salaries entitled to PIT exemption, as well as required documentary evidence of such origination of income. In addition, it is an open question as to how to proceed with the adjusted tax returns to reflect the fact that some income items of the last six months of 2009 (i.e. 13th month salary) have already been provisionally declared before 30 June 2009 to enjoy PIT deferment.

As each income-paying organisation will have its unique situation, the implications may vary on a case-by-case basis. Please contact your usual KPMG tax advisors to discuss how these issues should be managed.

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