

THE MINISTRY OF FINANCE

Circular No. 113/2011/TT-BTC dated August 04, 2011 of the Ministry of Finance amending, supplementing the Circular No. 62/2009/TT-BTC dated March 27, 2009, the Circular No. 02/2010/TT-BTC dated January 11, 2010 and the Circular No. 12/2011/TT-BTC dated January 26, 2011

Pursuant the Law No. 04/2007/QH12 dated November 21, 2007 of the National Assembly on Personal Income Tax;

Pursuant to the Decree No. 100/2008/ND-CP dated September 08, 2008 of the Government detailing a number of articles of the Law on personal income tax;

Pursuant to the Decree No. 118/2008/ND-CP dated November 27, 2008 of the Government defining the functions, tasks, powers and organizational structure of the Ministry of Finance;

The Ministry of Finance guides on amending the Circular No. 62/2009/TT-BTC dated March 27, 2009, the Circular No. 02/2010/TT-BTC dated January 11, 2010 and the Circular No. 12/2011/TT-BTC dated January 26, 2011 as follows:

Article 1. To amend Article 5, Circular 62/2009/TT-BTC dated March 27, 2009 amending and supplementing the Ministry of Finance's Circular No. 84/2008/TT-BTC of September 30, 2008 as follows:

Organizations and individuals that pay commissions to goods sale agents; salaries, wages, remuneration or other sums of money to individuals performing services of VND 1,000,000 or more each time shall withhold personal income tax before paying incomes to these individuals under the following guidance:

- Withholding tax at the single rate of 10% of paid incomes for individuals who have tax code and 20% of paid incomes for individuals who don't have tax code, except for cases for which the Ministry of Finance has given a written guidance on specific temporary withholding rates (for insurance or lottery agency commission).

To sign labor contract, service contract with individuals, organizations of labor contracts and service contracts will be responsible for informing individuals on above percentage of withholding rate so that individuals can make procedure on obtaining tax code.

Tax offices supply tax code within 5 working date from receiving full dossiers for tax code.

- In case individuals earn only incomes subject to tax withholding (including also insurance or lottery agents) at the above rate but their estimated total taxable incomes after deducting family circumstance-based reductions are not high enough to be taxed (for example, an individual earns an annual income of less than VND 48 million, for single ones, or less than VND 67.2 million, for those with one dependant, or less than VND 86.4 million, for those with two dependants, will be entitled to reduction for full 12 months,...), these individuals shall make written commitments (according to a form 23/BCK-TNCN provided together with this Circular, not printed herein) and send them to income payers for use as a temporary basis for delay of personal income tax withholding. Based on commitments of income recipients, income payers shall delay the tax withholding. Income payers shall still supply lists of these recipients and incomes of people who have not to the level of withholding rate to tax offices at the end of the year. These individuals shall take responsibility for their commitments; any frauds in their commitments shall be handled under the Law on Tax Administration.

For organizations and individuals that employ laborers under seasonal labor contracts of a term of between over 3 months and under 12 months, the tax withholding rate of 10% upon each time of income payment or of the total income will not apply but temporary tax withholding will be made on monthly incomes according to the Partially Progressive Tariff.

Article 2. To amend Article 5, Circular 02/2010/TT-BTC dated January 11, 2010 of the Ministry of Finance as follows:

The tax rate taxed incomes applies to individuals earning incomes from transfers of real estate, houses, apartment which are supplied certificates of land use rights, and house and apartment ownership will be implemented as follows:

a. The transfer price is the real price stated in the transfer contract. In case the transfer price isn't stated in the transfer contract or is lower than the price for land price or the price for registration fee calculation prescribed by the provincial-level/municipal People's Committee (provincial-level People's Committee in general) at the time the transfer contract, the transfer price will be applied in accordance with land price, registration fee calculation prescribed by the provincial-level People's Committee.

b. The taxpayer has lawful invoices and vouchers proving the truthfulness for the cost price include buying price and related expenses (expenses related to the grant of land use rights or house ownership certificates;

expenses for land improvement and house renovation; construction expenses and other related expenses).

c. The tax rate is 25% on the transfer revenue (Transfer price – Cost price).

In case cost price (buying price and related expenses) does not have sufficient proving invoices and vouchers, the tax rate of 2% of the transfer price will apply; in case it is found that the transfer price is not stated in the contract and or declared lower than the land price and registration fee calculation set by the provincial-level People's Committee, tax shall be calculated at the tax rate of the land price and registration fee calculation set by the provincial-level People's Committee.”

Article 3. To amend Article 2, Circular No. 12/2011/TT-BTC dated January 26, 2011 of the Ministry of Finance as follows:

For contract of obtaining the rights to buy house bases, contracts on the contribution of capital for obtaining the right to buy house bases or apartments before the validity of the Decree No. 71/2010/ND-CP dated June 23, 2010 of the Government detailing and guiding the implementation of the Housing Law Procedures for declaration and payment of personal income tax of 25% for incomes.

The transfer price stated in the transfer contract and declared in the tax declaration is lower than the price or the price for registration fee calculation prescribed by the provincial-level People's Committee at the time the transfer time or doesn't have proving invoices or vouchers, tax offices fix transfer price and calculated at the tax rate of 2% on fixed transfer price. The fix of transfer price bases on land price and registration fee calculation prescribed by provincial-level People's Committees.

2. Contracts on the purchase and sale of houses to be formed in future, individual will declare and pay at the tax rate of 25% on revenue. In case the transfer price stated in the transfer contract and declared in the tax declaration is not lower than the price or the price for registration fee calculation prescribed by the provincial-level People's Committee at the transfer time; or doesn't have proving invoices and vouchers for transfer price, cost price, tax offices will calculate at the tax rate of 2% on land price and registration fee calculation prescribed by provincial-level People's Committees.

Article 4. Organization of implementation

1. This Circular takes effect on September 19, 2011. To annul all guidance on personal income tax against this Circular.

2. Any arising problems in the course of implementation should be reported immediately to the Ministry of Finance (General Department of Tax) for timely settlement./.

FOR THE MINISTER

DEPUTY MINISTER

Do Hoang Anh Tuan

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