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Vietnam – Guidance Clarifies Base for Grossing Up, Determining Vietnam Source Income

by Hanh Ho, KPMG Vietnam (a KPMG International member firm)

Vietnam's Ministry of Finance issued Circular No. 111/2013/TT-BTC on 15/08/2013 ("Circular 111") concerning, among other things, the base for grossing up taxable income and the methods for determining Vietnam source income for personal income tax (PIT) purposes.[1]

In this *Flash International Executive Alert*, we highlight some of the salient provisions in Circular 111.

Base for Grossing Up to Taxable Income – Circular 111 does not mention the concessional tax treatment of the fringe benefits paid on a net-of-PIT-basis by the employer on behalf of employees. Rather, it provides that such fringe benefits (including taxable housing benefits) shall be added to other net income, then grossed up in total for PIT purposes.

Determination of Vietnam Sourced Income – For non-tax residents of Vietnam working in both Vietnam and overseas and having no split income for their work in Vietnam, their Vietnam sourced income for Vietnamese PIT is determined as follows:

- The non-tax resident of Vietnam is not present in Vietnam

$$\text{Vietnam sourced income} = \frac{\text{Number of working days in Vietnam}}{\text{Total working days per Vietnam Labour Code}} \times \text{Worldwide income (before tax)} + \text{Other income (before tax) arising in Vietnam}$$

- The non-tax resident of Vietnam is present in Vietnam

$$\text{Vietnam sourced income} = \frac{\text{Number of days being present in Vietnam}}{\text{365 days}} \times \text{Worldwide income (before tax)} + \text{Other income (before tax) arising in Vietnam}$$

Income Other Than Employment Income – Circular 111 regulates PIT withholdings and calculations on certain kinds of other income as follows:

- Taxation on income from the transfer of shares in a Joint Stock Company established under Vietnam's Law on Enterprise is to be treated consistently with the transfer of securities regardless of whether the shares are of a public or non-public company.

- Resident individuals who transfer securities can apply a PIT rate of 20 percent without being required to register the tax payment method in advance. On a withholding basis, the PIT rate of 0.1 percent is applied to sales proceeds of each transfer.

- Income derived from a transaction relating to capital contributions in the form of real estate to set up a business or increase the charter capital of an enterprise shall be subject to PIT as income from an immovable property transfer.

- Winnings from games at casinos or similar organizations are generally defined as the gain from the amount which the players pay in and the amount that the players cash out of the game. In cases where the casino or organization paying the prize cannot determine the taxable income of the winner to withhold PIT, such a casino or organization is required to apply PIT at a flat rate on the total amount paid out to the players.

- Each payment of VND 2,000,000 or more to resident individuals who do not sign labor contracts, or sign labor contracts of less than three months, are subject to withhold 10 percent PIT by the income-paying body.

In addition to the changes explained above, Circular 111 mentions that employer contributions to non-compulsory insurance and pension plans are subject to deferral of declaration and payment of PIT until that compensation is paid to the beneficial individual(s) by the insurer. Further guidance is expected from the tax authority concerning implementation of this provision with respect to the employer's responsibility for withholding tax.

Circular 111 took effect from 1 October 2013. The measures stipulated in the Law amending and supplementing a number of articles of PIT No. 26/2012/QH13 and Decree No. 65/2013/ND-CP remain effective from 1 July 2013.

Footnote:

1 Circular No. 111/2013/TT-BTC on 15/08/2013 ("Circular 111") to provide guidance for implementation of PIT Law No. 04/2007/QH12 dated 21/11/2007, Law No. 26/2012/QH13 dated 22/11/2012 amending and supplementing a number of articles of the PIT Law, and Decree No. 65/2013/ND-CP dated 28/06/2013.

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Watch This! **An IES Video on the 3.8-Percent Net Investment Income Tax**

In the United States, a new tax applies starting this year on net investment income. The Patient Protection and Affordable Care Act (as amended by the Health Care and Education Reconciliation Act of 2010 (Pub.L.111-152)), introduced a 3.8-percent net investment income tax (NIIT) that will impact individuals starting in 2013.

We invite you to watch this short video that discusses the net investment income tax and what it means for international assignees (subject to U.S. taxation) and their employers.

http://www.kpmginstitutes.com/taxwatch/insights/2013/ies-video-tax-on-net-investment-income.aspx

To better understand what the NIIT means for your assignees and the organization's international assignment program, please do not hesitate to contact your local IES/People Services professional.