

CIRCULAR

AMENDING CIRCULAR NO. 84/2008/TT-BTC ISSUED BY THE MINISTRY OF FINANCE ON SEPTEMBER 30, 2008 PROVIDING GUIDELINES ON THE IMPLEMENTATION OF SOME ARTICLES IN THE PERSONAL INCOME TAX LAW AND AMENDING CIRCULAR NO. 02/2010/TT-BTC ISSUED BY THE MINISTRY OF FINANCE ON JANUARY 11, 2010 PROVIDING ADDITIONAL GUIDELINES ON CIRCULAR NO. 84/2008/TT-BTC ISSUED BY THE MINISTRY OF FINANCE ON SEPTEMBER 30, 2008

Pursuant to Personal Income Tax Law No. 04/2007/QH12 on November 21, 2007;

Pursuant to Decree No. 100/2008/NĐ-CP issued by the Government on September 08, 2008 stipulating details of some articles in Personal Income Tax Law;

Pursuant to Law No. 47/2010/QH12 on Credit Institutions on June 16, 2010;

Pursuant to Decree No. 71/2010/NĐ-CP issued by the Government on June 23, 2010 stipulating details and providing guidelines on the implementation of the Housing Law.

Pursuant to Decree No. 118/2008/NĐ-CP issued by the Government on November 27, 2008 stipulating functions, duties, rights and organizational structure of the Ministry of Finance;

The Ministry of Finance provides guidelines to change Circular No. 84/2008/TT-BTC on September 30, 2008 and Circular No. 02/2010/TT-BTC on January 11, 2010 issued by the Ministry of Finance as follows:

Article 1. Changing some points in Circular No. 84/2008/TT-BTC on September 30, 2008 as follows:

1. Changing Point 3.5, Item II, Part A as follows:

"3.5. Income received from interests of bonds, commercial notes, and other promissory notes issued by domestic organizations (including foreign organizations duly established and operating in Vietnam), except for income from interests of bonds issued by the Vietnamese government and income from interests of deposits stipulated in Point 7, Item III, Part A of this Circular".

2. Changing Point 7, Item III, Part A as follows:

"7. Income from interests of deposits at banks, credit institutions; interests from life insurance policies.

7.1. Tax-free interests of deposits stipulated in this point shall include interests from deposits in Vietnamese currency, gold, foreign currencies received from credit institutions under the form of non-term deposits, term deposits, savings deposits, certificates of deposit, term promissory notes, commercial notes, and any other deposit forms in which principals and interests are fully paid to depositors as agreed. Other cases of receiving interests not from credit institutions established and operating under the Law on Credit Institutions shall not be tax-free.

7.2. Interests from life insurance policies are those received by individuals from life insurance policies of insurance companies.

7.3. Ground for defining tax-free income of the above interests:

- Income being interests of saving books (savings cards), certificates of deposit, term promissory notes, commercial notes and other promissory notes shall be based on the principle that principals and interests are fully paid to depositors as agreed.

- Income being interests of life insurance policies shall be based on interest payment documents of life insurance policies".

Article 2. Amending some Articles of Circular No. 02/2010/TT-BTC issued by the Ministry of Finance on January 11, 2010 as follows:

1. In Article 2, replacing the paragraph: "For individuals who have already possessed houses, housing land and now transfer capital contribution contracts for land plot/apartment purchasing rights or transfer land plot/apartment purchasing contracts, their income arising from such transfer activities shall not be exempted from personal income tax" with the paragraph: "For individuals who have already possessed houses, housing land and now transfer contracts for trading houses to be established in the future, their income arising from such transfer activities shall not be exempted from personal income tax".

2. In Article 2, replacing the paragraph: "capital contribution contracts for land plot/apartment purchasing rights" with the paragraph: "contracts for trading houses to be established in the future".

3. At Point 3.5.3.(b), Article 5, deleting the paragraph: "For individuals transferring capital contribution contracts for land plot/apartment purchasing rights, the purchasing price is based on capital contribution documents and any other invoices, documents justifying related expenses. Expenses relating to real estate transfer include interests paid to credit institutions for real estate purchasing loans. If only part of the capital is contributed (capital not fully contributed under the contract), the purchasing price shall be defined as follows:

$$\text{Purchasing price} = \left\{ \begin{array}{l} \text{Total capital to be} \\ \text{contributed under the} \\ \text{contract} \end{array} \right. - \left\{ \begin{array}{l} \text{Unpaid capital (not} \\ \text{submitted)} \end{array} \right\} + \text{Any other related expenses".}$$

4. Replacing Article 6 with the new Article 6 as follows:

"Article 6. Adding Point 2.5.5 into Point 2.5, Item II, Part D as follows:

2.5.5. Procedures for declaring and submitting personal income tax for transferring contracts for trading houses to be established in the future:

a) Households, individuals transferring contracts for trading houses to be established in the future shall declare and submit personal income tax at the local Tax Agency where the property is transferred or at organizations, individuals authorized by the tax agencies for tax collection. Tax declaration file includes:

- Notarized contract for transferring the contract for trading the house to be established in the future. From the second transfer, involved parties shall present the previous contract for transferring the contract for trading the house to be established in the future

- The contract for trading the house to be established in the future signed with Grade I, Grade II project owners or project owners' real estate trading floors.

- Personal income tax declaration form No. 11/KK-TNCN (Issued in attachment to Circular No. 62/2009/TT-BTC issued by the Ministry of Finance on March 27, 2009). At Item (04) on the declaration form, the contract for trading the house to be established in the future shall be reflected, instead of the land use right or the house ownership certificate.

b) In order to facilitate individuals transferring contracts for trading houses to be established in the future to declare and submit tax; based on the actual situation at the locality, the tax agency shall decide to authorize house trading organizations, individuals (owners of housing, Grade I, Grade II urban zone projects, and real estate trading floors) to collect personal income tax. Tax collection authorization orders, procedures and remunerations shall comply with regulations of the Tax Management Law.

c) For households, individuals transferring contracts for trading houses to be established in the future, if the transfer price written on the transfer contract and in the tax declaration form are not

in accordance with market prices, the tax agency shall fix the transfer price for taxation purpose after consulting (according to Working Minutes) prices at real estate trading floors of project owners or the trading floor where the property is transferred.

Taxable income for transferring contracts for trading houses to be established in the future shall be defined as (=) Total transfer price based on the trading floor prices minus (-) Total purchase price written on the contract for trading the house to be established in the future. The tax rate applicable for transfer activities of contracts for trading houses to be established in the future shall be 25%.

In case the trading floor prices are unable to be defined, a tax rate of 2% on the total purchase price written in the contract for trading the house to be established in the future shall be applied.

d) Besides papers in the tax declaration file as explained in Circular No. 84/2008/TT-BTC issued by the Ministry of Finance on September 30, 2008, Circular No. 161/2009/TT-BTC issued by the Ministry of Finance on August 12, 2009 and in this Circular; the tax agency shall not be permitted to ask for any additional papers from real estate transferring households, individuals.

Article 3. Organization of implementation:

1. The Circular comes into effect 45 days after its signing date. Guidelines on personal income tax contradictory to this Circular are annulled.

2. Any enquiries or obstacles arising during the course of implementation shall be reflected by organizations, individuals to the Ministry of Finance (Tax General Department) for opportune settlement.

To:

- Prime Minister, Deputy Prime Ministers;
- Central Office and Committees of the Party;
- State Presidential Office, National Assembly;
- National Council and National Assembly Committees;
- Ministries, Ministerial Agencies, agencies under Government;
- Central Steering Committee for Corruption Prevention and Fighting;
- Supreme People's Procuracy;
- Supreme People's Court;
- State Auditors;
- Vietnam Central Fatherland Front;
- Central agencies of social organizations;
- People's Councils, People's Committees, Services of Finance, Tax Services of provinces and cities under the Central government;
- National Gazette;
- Legal Document Checking Department (Ministry of Justice);
- Government website;
- Units under the Ministry of Finance;
- Website of the Ministry of Finance;
- Archives: VT, TCT (VT, TNCN).

**FOR AND ON BEHALF OF THE MINISTER
VICE MINISTER**

Do Hoang Anh Tuan