February 2016

The following tax information is translated from Korean for foreign-invested companies, and is not legally binding.

Q. **If an employee transfers from a company's headquarters to its branch or vice versa, how should he/she file a year-end tax settlement?**

A. Because a transfer between the headquarters and a branch of the same company is not technically considered retirement, the employee should include the earned income from both the previous and current place of business when filing a year-end tax settlement. Therefore, on the form, the earned income from the former place of work should be marked in the 'previous job' box, and the earned income from the current place of work should be marked in the 'current job' box.

Source: Corporate Tax Division, (Oct. 25, 1999)

Q. **If a foreign executive resided at a domestic hotel for one year or longer, are hotel bills covered by the company considered earned income?**

A. Because 'company housing' as prescribed by Article 15-2 of the Enforcement Rule of the Income Tax Act refers to 'housing' as prescribed by Article 2 Subparagraph 1 of the Housing Act, a hotel is not considered housing. Therefore, the hotel bills that the company paid for an executive who is not a shareholder is considered earned income.

Source: International Tax Resource Management Office (May 6, 2010)

Q. **Is the insurance premium paid to a foreign insurance company considered a National Health Insurance premium?**

A. If a foreigner working in Korea is exempted from the National Health Insurance subscription, the insurance payment he/she paid to the foreign insurance company during his/her service in Korea is not considered a National Health Insurance premium as prescribed by Article 52 of the Income Tax Act.

Source: Withholding Tax Division (Apr. 24, 2009)

Q. **Are the lineal ascendants of a foreigner residing in their home country eligible for basic deduction?**

A. If the lineal ascendants of a foreign resident or his/her foreign spouse reside in their home country and it can be proven that they are financially supported by the foreign resident, they are eligible for basic deduction.

Source: Ministry of Strategy and Finance (Feb. 10, 2010)

Tax News

Q. **In what cases does a taxpayer need to file year-end tax settlement again?**

A. **Year-end tax settlement has to be filed again in the following cases:**

❖ **When earned income is additionally paid** (Basic Guidelines of the Income Tax Act 137-0…1)
- When earned income is additionally paid after a taxpayer has already filed the year-end tax adjustment, he/she should file the year-end tax adjustment again.

❖ **Year-end tax settlement on constructive bonus** (Basic Guidelines of the Income Tax Act 135-192…3)
- In order to withhold income tax for the constructive bonus that is disposed of in accordance with Article 106 of the Enforcement Decree of the Corporate Tax Act, the year-end tax settlement should be filed again in accordance with Article 137 or 138 of the Income Tax Act. In the re-filed year-end tax settlement, earned income should include the constructive bonus.
- Constructive bonus is deemed to have been paid on the date of filing corporate tax returns, the date of filing amended corporate tax returns, or the date on which a notice of the change in the amount of income has been received. However, the income shall be attributable to the year in which labor was originally provided, and the amended year-end tax settlement should be filed. The difference should be paid by the 10th day of the month following one of the above mentioned dates.
- On the withholding tax implementation status report, the amount of income on the notice of change in the amount of income should be stated, and the report form shall not be submitted in the form of an amended report.
- The attributable month and date shall be stated as February of the following year. For example, the income for 2015 shall be attributable to February 2016.

❖ **When to file year-end tax settlement if wage and salary for the period of unfair dismissal is paid in accordance with court rulings** (Basic Guidelines of the Income Tax Act 20-38…3)
- If an employee is paid the wage and salary for the period of unfair dismissal in lump sum following a court ruling or settlement, the wage and salary shall be considered earned income for providing service during the period of unfair dismissal.
- Should a withholding agent withhold taxes as follows, it shall be considered that taxes have been withheld within the due date in accordance with Article 134 (2) of the Income Tax Act.
  - i) When a court ruling or settlement is delivered after the taxable period, year-end tax settlement should be filed in accordance with Article 137 (1) of the Income Tax Act by the last day of the following month of the date in which the ruling or settlement is delivered.
  - ii) When court ruling or settlement is delivered before the last day of the taxable period to which the wage and salary is attributable, tax should be withheld in accordance with Article 134 (1) or (2) of the Income Tax Act.

* In other words, wage and salary during the period of unfair dismissal is attributable to the period of unfair dismissal. The due date for tax withholding or year-end tax settlement is the last day of the following month of the date in which court ruling or settlement is delivered, and tax should be filed and paid in accordance with Article 128 of the income Tax Act.

For more information, please contact the International Tax Resource Management Office of the National Tax Service (82-44-204-2884).

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