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Korea: Separate filing of local income tax return required starting in 2020

What is the change?

Tax returns for national income tax and local income tax will need to be filed separately, effective January 1, 2020.

What does the change mean?

A taxpayer is obligated to pay a national income tax and local income tax surcharge (equivalent to 10% of income tax) on taxable income. Even though national income tax is administrated by tax authorities and local income tax is administrated by a district's local government, taxpayers were allowed to file one consolidated tax return to tax authorities (for the taxpayers' convenience) for the last seven years. The tax authorities then forwarded the local income tax information to a district's local government.

However, the grace period for one consolidated tax filing is over as of December 31, 2019. Effective January 1, 2020, a taxpayer is required to file an additional tax return for local income tax to the district local government. In addition,

no penalty for nonfiling or underreporting will be imposed if late filing occurs or a revised tax return is submitted after the statutory filing deadline but within one (1) month.

Deloitte's view

Previously, there has been no separate local income tax filing, since it had been reported to the tax authorities as a part of annual income tax return. However, effective January 1, 2020, an additional tax filing obligation arises for local income tax to be filed to a district's local government. Two tax returns should now be prepared and filed separately by the statutory due date.

Deloitte Korea is willing to assist with the filing of local income tax to a district's local government.

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People's Republic of China: New administrative rules issued for non-residents claiming treaty benefits

What is the change?

China's State Taxation Administration (STA) issued Bulletin 35 on 14 October 2019, which revises the rules for nonresidents to claim benefits under China's tax treaties. The new rules will apply as from 1 January 2020, replacing the current administrative measures in Bulletin 60 dating from 2015. Bulletin 35 aims to streamline the procedure for nonresidents to claim treaty benefits.

What does the change mean?

Simplification of treaty claim procedures: Under the current rules in Bulletin 60, a nonresident recipient of China-source income must submit two forms containing detailed information, as well as specified documents, to the appropriate tax authorities before treaty benefits are granted. This procedure can be burdensome and effectively allows the Chinese tax authorities to assess a nonresident's eligibility for treaty benefits, which in practice, can become an examination and approval procedure.

Bulletin 35 will require the submission of a single form (Information Reporting Form), which may be submitted by the nonresident or the withholding agent. The new form will require considerably less information (e.g. the taxpayer's name and contact information), along with a statement by the taxpayer confirming that:

- The taxpayer is a resident of the other contracting state based on the laws and regulations of that state and under the relevant tax treaty;
- The principal purpose of the arrangement or transaction at issue is not to obtain treaty benefits;
- The taxpayer believes that it meets the requirements upon self-assessment and takes legal responsibility for claiming treaty benefits; and
- The taxpayer will retain relevant documentation for review by the Chinese tax authorities and will cooperate with the authorities.

With regard to documentation, Bulletin 60 requires taxpayers to submit documents to support the claim for treaty benefits, such as a tax residence certificate, copies of passports and documents evidencing ownership. Under Bulletin 35, these documents only have to be retained, but not submitted to the tax authorities (unless so requested).

The simplification of the procedure to claim treaty benefits should alleviate the burden on nonresidents and withholding agents, but it also will mean that the tax authorities will not be able to assess eligibility for treaty benefits at the stage of filing.

Responsibilities of nonresidents and withholding agents: Another significant change made by Bulletin 35 is the determination of the responsibilities of nonresidents and withholding agents (who generally are the payers of the income).

Nonresidents will have the following responsibilities under Bulletin 35:

- The nonresident must complete the Information Reporting Form accurately and submit the form directly to the withholding agent.
- Where a nonresident enjoys tax treaty benefits to which it was not entitled, the nonresident will be deemed to have failed to declare and pay tax in accordance with the relevant tax rules, and the tax authorities will recover the tax from the nonresident (the nonresident also may be liable for penalties and interest (unless the underpaid tax is the fault of the withholding agent)).
- Nonresidents must collect and retain documentation supporting a claim for treaty benefits to enable the Chinese tax authorities to conduct a follow-up review, and timely submit the documents to the authorities upon their request. This documentation must be retained for a prescribed time period as established by law.

The responsibilities of the withholding agents are as follows:

- The withholding agent must verify the completeness of the Information Reporting Form and file the document.
- Where a nonresident does not submit an Information Reporting Form to the withholding agent, or if the form is not complete, the withholding agent must withhold tax according to domestic law without regard to any treaty provisions; failure to do so will result in penalties being imposed on the withholding agent. If underpaid tax is due to the withholding agent's failure to file the form properly, withhold tax or submit documents to the tax authorities, the withholding agent will be subject to penalties.
- During the follow-up administration, the tax authorities may require the withholding agent to cooperate in the investigation and provide relevant documents within a specified timeline.

Bulletin 35 clearly makes nonresidents responsible for correct assessments relating to entitlements to treaty benefits, which should provide certainty as to the allocation of responsibilities between the parties in cross-border transactions and thus potentially should prevent disputes.

Strengthening follow-up administration: Bulletin 35 empowers the Chinese tax authorities to require nonresidents to produce documents supporting a claim for treaty benefits within a specified time period. In addition to the documents stipulated in Bulletin 35, the authorities may request other relevant documents. As such, Bulletin 35 defers the submission of relevant documents from the time treaty benefits are claimed to the follow-up stage.

It is likely that the tax authorities' follow-up administration on nonresidents claiming treaty benefits will intensify as a result of the simplification of the filing procedure. To manage potential risks, nonresidents that have claimed treaty benefits under China's tax treaties should retain relevant documents.

Deloitte's view

Although Bulletin 35 makes the process for claiming treaty benefits more convenient and efficient, it does not lower the substance documentation requirements for non-residents.

Under Bulletin 35, non-residents now only have to complete the Information Reporting Form, which should reduce the administrative burdens as compared with the more extensive reporting required in the past. However, non-residents still will be subject to possible review by the tax authorities after making a claim for treaty benefits. Thus, non-residents should assess whether they are qualified for treaty relief and prepare sufficient documentation for claiming treaty benefits to avoid any potential challenges by the tax authorities in the future.

Furthermore, the withholding agent should verify carefully the completeness of the Information Reporting Form and make any relevant tax filings. As stated above, withholding agents may be subject to penalties for failure to meet these compliance requirements.

For multinational companies that have employees with short-term assignments or who are frequent business travellers, the companies should become familiar with the new rules and ensure that proper and accurate documentation has been prepared for any employees claiming tax treaty benefits under one of China's tax treaties.

Companies should have proper internal control systems in place and seek professional advice where necessary to assist employees in obtaining treaty benefits.

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Romania: Special tax regime applicable for Euro 2020

What is the change?

The Romanian Government provides a temporary special tax regime for individuals and legal entities involved in the organizational activities of the 2020 Union of European Football Associations (UEFA) European Football Championship games, which will be held in Romania.

What does the change mean?

No personal or corporate tax will be due in Romania for nonresident individuals and legal entities involved in organizing the Euro 2020 tournament.

- **Implementation time frame:** The procedure outlining how to benefit from the tax exemption will be published shortly.
- **Who is affected:** Nonresident individuals and legal entities involved in the organization of Euro 2020.

Background

Until now, the Romanian tax law has not provided for such tax exemptions for individuals or legal entities participating in similar sporting events.

Deloitte's view

The measure is meant to ensure that the tournament occurs without any major issues, by helping to support those people and entities who are executing the event. The procedure that will be published should provide more clarity on the tax exemption eligibility and the process to follow.

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Singapore: Proactive perspective – what’s needed most

What is the change?

Removal of administrative concession for Singapore citizens working overseas: The Inland Revenue Authority of Singapore (IRAS) recently announced the removal of the administrative concession for Singapore citizens working overseas to elect to be treated and assessed as a nonresident for tax purposes, effective from the year of assessment (YA) 2021 (*i.e.*, income year 2020).

The IRAS has informed us that Singapore citizens who have been working overseas during the entire year may still elect to be assessed as a nonresident.

As a nonresident, they may qualify for tax exemption as nonresident short-term visiting employees under Section 13(6) of the Singapore Income Tax Act (SITA), commonly referred to as the “60-day exemption,” if they travel back to Singapore for work purposes for not more than 60 days during a calendar year.

Separately, in order for Singapore citizens who are working outside Singapore for part of the year to be considered and assessed as a nonresident for that YA, the IRAS would require certain details, such as:

- A period of Singapore employment
- Any other income derived in Singapore
- Reasons for requesting to be assessed as a nonresident

What does the change mean?

Employee: Where the election to be treated as a nonresident does not apply, exemption under Section 13(6) of the SITA would not be applicable to overseas-based Singapore-citizen employees who are required to return to Singapore for business trips. If so, they would be subjected to tax in Singapore on income attributable to the entire business trips to Singapore, and there would be no *de minimis* number of days (*i.e.*, 60 days) for exemption of income.

The IRAS has clarified that Singapore citizens may still be allowed to elect or apply to be assessed as nontax residents – if they meet certain conditions – which the IRAS will review on a case-by-case basis. As a nontax resident, they are allowed to seek exemption under Section 13(6) in respect of income attributable to business trips to Singapore, if it is beneficial to do so. Nevertheless, individuals should note that, as nonresidents, any other Singapore-sourced chargeable income derived (*e.g.*, rental income from property situated in Singapore) would be subjected to tax at nonresident rates.

Employer: Employers of Singapore-citizen employees who are working outside of Singapore and who are not assessed as a nonresident for the year are obligated to prepare Form IR8A or Form IR8E (*i.e.*, Annual Return of Employee’s Remuneration) to report their Singapore employment income attributable to business trips to Singapore, as exemption under Section 13(6) would not apply.

However, for individuals who may be assessed as nonresidents, there may be no requirement for employers to prepare Forms IR8A or IR8E to declare such income if exemption under Section 13(6) can be utilised.

Deloitte’s view

With clarity from the IRAS, Singapore citizens who work overseas for the entire year may continue to elect to be assessed as nonresidents for tax purposes and, therefore, may be eligible for income exemption under Section 13(6) as short-term visiting employees if they meet all the qualifying conditions.

Although the IRAS has indicated that it is prepared to review the election of nontax residency on a case-by-case basis, Singapore citizens who have worked overseas during part of the year may not be able to elect as a nonresident, even though the period of overseas employment is more than six months during a year.

In addition, the IRAS has now duly considered equitability for all Singapore citizens, Singapore permanent residents, and foreign employees who are based outside of Singapore for employment but are required to return to Singapore for business trips, as they can now enjoy tax exemption under Section 13(6) if all conditions are met.

Both employers and Singapore-citizen employees will need to track their business travel and, to the extent possible, limit their trip(s) to Singapore for business purposes to mitigate their Singapore tax exposures.

Should you have any comments or questions arising from this newsletter, please contact either the listed names below, or any member of the Singapore Tax & Legal team.

URL: <https://www2.deloitte.com/sg/en/pages/tax/articles/tax-legal-team.html>

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