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Korea:
Proposed 2015 tax law revisions

Overview

On August 6, 2014, the Korean Ministry of Strategy and Finance (MOSF) released its proposed 2015 tax law revisions. The following is a selection of proposed 2015 tax law revisions relevant to global employer services. The proposed 2015 tax law revisions will be deliberated by the Korean National Assembly, which may approve the revisions in late December 2014.

Flat tax rate individual income tax incentive for foreigners

Under the Korean Tax Incentives Limitation Law (TILL), when calculating individual income tax liability on earned income, foreigners may elect to use a flat tax rate as an alternative to the regular progressive individual income tax rates. If elected, foreigners may apply a flat tax rate to their gross earned income, with no deductions, income exclusions, or tax credits allowed. This is in lieu of the regular progressive individual income tax rates, which range from 6% to 38% (6.6% to 41.8%, including local income tax surcharge).

Effective January 1, 2014:

1. Election of the flat tax rate individual income tax incentive for foreigners is only allowed in the five-year period beginning from the foreign employee's Korean employment start date.
2. A foreign employee who has a special relationship with his or her employer does not qualify for the flat tax rate individual income tax incentive.
3. A special relationship means employee or a family member (i.e., spouse and relative second cousin or closer) with direct or indirect control over management of the company.

Under the proposed 2015 tax law revisions:

1. Sunset for the flat tax rate individual income tax incentive for foreigners is to be extended to December 31, 2016.
2. There will be no expiration date for application of the foreigner flat tax rate individual income tax incentive for qualified headquarters companies. Qualified headquarters company means a global company headquartered in Korea and performing support work for the core businesses, i.e., business strategy, personnel management, research and development (R&D), etc.

Definition of tax resident

Currently, a Korean tax resident is defined as an individual who has resided in Korea for 12 months or more (technically, 365 days in any two consecutive tax years). Additionally, if an individual's facts and circumstances indicate that it is reasonably certain that the individual will stay in Korea for 12 months or more, such individual will be considered as tax resident from the start of the stay in Korea. For example, if the Korea assignment duration as indicated in the assignment letter is 12 months or more, such inbound assignee would be considered as Korean tax resident from the start of the Korea assignment.

The MOSF has proposed to decrease the period of time used to determine tax residency status from 12 months to 183 days.

Deloitte's view

We do not expect any substantial impact of this law revision since under Article 3 of the Individual Income Tax Law (IITL), Scope of Taxation, if a foreign tax resident has resided in Korea for less than five years in the previous 10-year period, foreign-sourced income is only taxable in Korea if such foreign sourced income is either remitted to Korea or paid in Korea (short-term resident alien). So, an inbound foreigner qualifying as a short-term resident alien will in most cases only be taxed on Korean-sourced income, which is the same as a Korean tax nonresident.

Additionally, a Korean tax non-resident may only deduct an individual exemption for the taxpayer and no other deductions are allowed, while a Korean tax resident (including short-term resident alien) is allowed full deductions.

Special foreign technician/engineer tax exemption

Currently, under the TILL certain foreign technicians/engineers may qualify for a special tax exemption, where 50% of wages received from a domestic entity by a qualified foreign technician/engineer providing services in Korea to the domestic entity may be eligible for tax exemption for two years from the date on which the foreign technician/engineer commences rendering services in Korea.

In order to be eligible for the exemption, the foreign technician/engineer must have had at least five years' work experience, or three years' experience with a bachelor's or higher degree, and be contracted to work in a field designated by law, such as construction, mining, technology-intensive industries, certain engineering services.

The current regulation for foreign technician/engineer tax exemption is subject to a sunset clause, which is due to expire on December 31, 2014.

The MOSF has proposed to extend the sunset clause for the foreign technician/engineer tax exemption through December 31, 2018.

In addition, the MOSF has proposed to tighten the qualification scope for the foreign technician/engineer tax exemption, and under the proposed tax law revision, only foreign technicians/engineers working in the R&D centers of foreign-invested companies would qualify for tax exemption GES NewsFlash.

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People's Republic of China:
Failure to comply with tax reporting obligations may result in foreigners in Beijing being restricted from leaving China

Overview

According to a recent report by China Tax News, the Beijing Local Tax Bureau and the Beijing Public Security Bureau (PSB) have announced a joint effort to improve individual income tax (IIT) compliance by foreign nationals residing in Beijing. In addition to the imposition of late payment interest and penalties, failure to comply with IIT reporting obligations may also result in restrictions on the ability of the individual to leave China.

Key implications

With the foreign population increasing by about 3% annually in the last three years, the Beijing Local Tax Bureau established international tax administration teams in many district-level tax authorities to improve compliance. At the same time, the Beijing tax authorities have endeavored to set up cooperation mechanisms with various municipal departments to improve efficiency in information collection, tax law enforcement, and daily administration.

The bureau now will cooperate with the Beijing Industrial and Commercial Bureau, the Beijing Municipal Human Resources and Social Security Bureau, and the Beijing PSB to share and exchange the relevant information. If noncompliance is discovered, the Beijing Local Tax Bureau will inform Beijing PSB so it can restrict the foreign individual's ability to depart from China.

The enhanced collaboration will make it easier for the Beijing Local Tax Bureau to monitor whether foreign individuals have filed their tax returns timely and accurately. For example:

1. The Beijing PSB can periodically share travel information relating to foreign individuals with the Beijing Local Tax Bureau to ascertain whether individuals that were present in China for more than 90/183 days have timely fulfilled their IIT reporting obligations.
2. For foreign individuals who have obtained working documents from the Beijing Labor Bureau and who participate in the Chinese social security scheme, the Beijing Labor Bureau and Beijing Social Security Bureau can provide the individual's registration information to the Beijing Local Tax Bureau in order to track IIT reporting records.

Deloitte's view

The trend for Chinese government agencies to cooperate more closely and share information will make it easier for the tax authorities to detect noncompliance among foreign nationals and to impose restrictions on the ability of a foreigner to leave China when tax noncompliance is discovered. Companies should conduct internal compliance reviews regularly, i.e., monitor employees' business travel days, and review mobility policies and tax reporting procedures to ensure relevant documentation and reporting are in line with the prevailing tax regulations and local practices.

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