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

**Q.** In a transaction between the domestic business establishment of a foreign company and the foreign company’s headquarters, what expenses from guaranteed transactions are excluded from deductible expenses?

**A.**

1) For a foreign-invested company to receive tax reduction/exemption for the portion of increased capital, the company should submit an application for tax reduction/exemption to the Minister of Strategy and Finance in accordance with Articles 121-2 (6) and 121-4 (1) of the Restriction of Special Taxation Act, unless the company is exempted from application for tax reduction/exemption pursuant to Article 121-4 (5) of the same Act.

2) When additional capital increase is made in a business for which tax reduction/exemption has been granted, does tax reduction/exemption apply for the increased capital without making a separate application for tax reduction/exemption?

   1. If the Korean branch of a foreign bank transfers credit risk to the overseas headquarters of the bank through transactions such as risk participation transactions or stand-by L/C transactions, which are recognized as items excluded from the scope of credit extension in accordance with the Banking Act and its Enforcement Decree (and other related regulations such as the Regulations on Supervision of Banking Institutions), the expenses arising from such financial transactions shall not be considered ‘expenses such as fees arising from guaranteed transactions’ as prescribed by Article 64 (1) 2 of the Enforcement Rule of the Corporate Tax Act.

   2. Where it is difficult to separately account for common gains and losses, such as where a foreign-invested company shares the same processing line of the same business establishment, proportional calculation shall apply in accordance with Article 51-6 of the Enforcement Rule of the Restriction of Special Taxation Act and Article 121-4-0 (1) of the Basic Guidelines of the Act. However, the relevant facts shall be considered when determining such matters.

   3. If Korea’s Fair Trade Commission did not impose sanctions on the company for the said issue of fair trade violation, the legal expenses and civil settlements paid do not fall under the Article 21 Subparagraph 5 of the Corporate Tax Act (refer below). Therefore, as such expenses do not qualify as non-deductible expenses, they are considered deductible expenses under Article 19 of the same Act.

   Source: Ministry of Strategy and Finance (Feb. 5, 2016)

**Q.** An overseas parent company contributes funds to an employee stock ownership trust, and the company’s subsidiaries each remit funds to the parent company to cover the parent company’s contribution. In this case, can a Korean subsidiary’s remittance to the parent company be included in deductible expense?

**A.**

1. An overseas parent company and the largest shareholder of the company established an employee stock ownership trust pursuant to the related laws and regulations of the country in which the parent company operates and implemented a program for distributing incentives (i.e., trust dividends) to the employees in all its subsidiaries around the world. The parent company’s contributions to the trust are covered by funds remitted from its subsidiaries around the world. In this case, the Korean subsidiary’s remittance to the parent company is not included in deductible expense.

2. If Korea’s Fair Trade Commission did not impose sanctions on the company for the said issue of fair trade violation, the legal expenses and civil settlements paid do not fall under the Article 21 Subparagraph 5 of the Corporate Tax Act (refer below). Therefore, as such expenses do not qualify as non-deductible expenses, they are considered deductible expenses under Article 19 of the same Act.

   * Article 21 of the Corporate Tax Act (Non-inclusion of Taxes and Public Charges in Deductible Expenses): None of the following taxes and public charges shall be included in deductible expenses for the purpose of calculating the amount of income of a domestic corporation for each business year.
   1. - 4. Omitted
   5. Public charges imposed as sanctions for non-performance of duties, or a violation of prohibitions or restrictions binder Acts and subordinate Acts.
   6. Omitted

**Q.** Can the civil settlements and legal expenses for an overseas civil lawsuit on price-fixing be included in deductible expense?

**A.**

1. A Korean company was filed a civil lawsuit in the U.S. by a group of indirect buyers, and another civil lawsuit in Canada by a group of direct and indirect buyers for violating fair trade. The case was closed after the company paid civil settlements. If Korea’s Fair Trade Commission did not impose sanctions on the company for the said issue of fair trade violation, the legal expenses and civil settlements paid do not fall under the Article 21 Subparagraph 5 of the Corporate Tax Act (refer below). Therefore, as such expenses do not qualify as non-deductible expenses, they are considered deductible expenses under Article 19 of the same Act.

   Source: Ministry of Strategy and Finance (Feb. 5, 2016)

**Q.** When determining qualification as an ‘enterprise of middle standing’ as prescribed by Article 9 (4) 4 of the Enforcement Decree of the Restriction of Special Taxation Act, does the sum of the sales of all related companies apply as a criteria?

**A.**

1. When applying tax credit for research and human resources development expenses pursuant to Article 10 of the Restriction of Special Taxation Act, even if a company is a related company, the requirement on the sum of the sales of all related companies for the preceding three years shall not apply as a criteria.

   Source: National Tax Service (Sep. 30, 2015)

* Related company: A group of companies with which an individual or a company subject to external audit is in a parent-subsidiary relationship by taking control of other domestic companies.

For more information, please contact the International Tax Resource Management Office of the National Tax Service (82-44-204-2872~74).