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

Q. Is the following PFV considered an operator of a ‘specific business’?

A. A project financing vehicle (PFV) that satisfies the conditions in Article 51-2 (1) 9 of the Corporate Tax Act constructed a building and leased it out. The PFV acquired land attached to the building within its duration of existence under its articles of incorporation to enhance profitability in its real estate development and supply business, which is stated as the purpose of the PFV in its articles of incorporation. In this case, the PFV shall be recognized as an operator of a ‘specific business’ as prescribed by Article 51-2 (1) 9 (a) of the same Act.

☞ Article 51-2 (1) of the Corporate Tax Act.

Article 51-2 Income Deductions for Special Purpose Companies, etc.
(1) Where any of the following domestic corporations distributes at least 90 percent of distributable profits prescribed by Presidential Decree, such amount shall be deducted from the amount of income for the relevant business year:
1 – 8: Omitted
9. An investment company similar to those provided in subparagraphs 1 through 8 which is a corporation meeting the following requirements:
(a) Its assets shall be used for an investment in plants and infrastructure, the development of resources, or a specific business requiring substantial time and money, and its profits shall be distributed to its stockholders,
(b) - (h): Omitted
Source: National Tax Service (Jan. 7, 2016)

Q. Is a PFV that extended its duration of existence under its articles of incorporation considered to ‘exist for a limited period’ and therefore qualify as a domestic corporation eligible for income deduction for distribution of distributable profits as prescribed by Article 51-2 of the Corporate Tax Act?

A. A PFV that satisfies the requirements in Article 51-2 (1) 9 of the Corporate Tax Act constructed a building for lease and then put the building up for sale. However, the PFV extended its duration of existence under its articles of incorporation because it failed to sell the building due to the economic slowdown, etc. In this case, the PFV still qualifies as a corporation established to exist for a limited period as prescribed by Article 51-2 (1) 9 (c) of the Corporate Tax Act.

Source: National Tax Service (May 2, 2016)

☞ A company that falls under the following should exist for a limited period of at least two years:
1) The company distributes at least 90 percent of its distributable profits and is therefore eligible for income deduction for the distributed profit, as prescribed by Article 51-2 (1) of the Corporate Tax Act; and
2) The company uses its assets for investment in plants and infrastructure, the development of resources, etc. and distributes the profits to its stockholders.
Q. Under the Korea-Canada Free Trade Agreement, goods that are re-imported after being repaired are exempted from customs duties. Are such goods exempted from value added tax as well?

A. A Korean air transport operator temporarily exported aircraft parts to Canada and re-imported them for the purpose of repair or processing (the repair costs were included in the re-import price). In accordance with Article 8 (1) 2 of the Act on Special Cases of the Customs Act for the Implementation of Free Trade Agreements, the parts are exempted from customs duties. In this case, value added tax is exempted as well when the parts are re-imported, as prescribed by Article 27 Subparagraph 15 of the Value Added Tax Act and Article 56 Subparagraph 16 of the Enforcement Decree of the Act.

Source: National Tax Service (Apr. 22, 2016)

Q. Are payments for purchase of software under a reseller agreement considered royalty?

A. A domestic company signed a software reseller agreement with a U.S. company that does not have a domestic business establishment in Korea, to distribute the software in Korea. In this case, if the domestic company’s payment to the U.S. company for purchase of the software is calculated based on certain criteria related to software use, or in proportion to the income accrued from the sale of the software to domestic end-users, such payment shall be considered royalty in accordance with Article 93 Subparagraph 8 of the Corporate Tax Act and Article 14 of the United States – Republic of Korea Income Tax Convention.

Source: National Tax Service (Jun. 23, 2016)

Q. What type of income is arrangement fee paid to a U.S. company classified as?

A. A U.S. company that mainly operates a clothing manufacturing business and does not have a domestic business establishment in Korea designated a quality inspection body for a domestic supplier and received a fee for the arrangement. In this case, the arrangement fee is considered ‘other income’ as prescribed by Article 93 Subparagraph 10 of the Corporate Tax Act.

Source: Ministry of Strategy and Finance (Apr. 19, 2016)

Q. A domestic company settled interim severance pay when it adopted an annual salary system for executives. However, the company later abolished the annual salary system and re-adopted its former salary system, under which severance pay applies retroactively to include the period for which interim severance payment was settled. In this case, is the interim severance payment considered deductible expense?

A. The domestic company adopted an annual salary system for executives and settled interim severance pay for their service period under the condition that no additional severance pay will be paid in the future. However, a few years later, at a annual general meeting of shareholders, the company resolved to re-adopt its former salary system and revised its severance pay regulations to retroactively include the service period for which interim severance pay was settled when calculating severance pay for executives. Under such circumstances, the interim severance payment shall be considered provisional payment not related to work and therefore not considered deductible expense. Also, the company’s revised severance pay regulations shall not be considered calculation standards for severance benefits for executives stipulated by the articles of incorporation as prescribed by Article 44 (4) 1 or 5 of the Enforcement Decree of the Income Tax Act.

Source: National Tax Service (May 24, 2016)

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