

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

◇ Q&A

※ Whether the following case constitutes a just cause for reduction/exemption of penalty tax (Sept. 28, 2018)

- Q) A withholding agent withheld more than the tax amount that should have been withheld, when paying income to the taxpayer. Afterwards, the taxpayer received tax deduction based on the tax amount over-collected by the withholding agent, when filing a corporate tax return. In this case, does a just cause for penalty tax reduction/exemption for the under-filed and under-paid tax amount exist?
- A) When the amount of tax is excessively withheld at the source, the taxpayer is obligated to check whether the withheld amount is proper. If the amount of tax withheld is excessive, the taxpayer should seek refund of the excessive withholding tax amount from the withholding agent and enter the correctly calculated amount of pre-paid tax amount when filing income tax return. Therefore, if the withholding agent withheld more than the amount prescribed by tax laws and the taxpayer (company) received an excessive deduction on pre-paid tax which resulted in under-filing and under-payment of tax, this does not constitute 'justifiable grounds' for reduction/exemption of penalty tax as prescribed by Article 48 of the Framework Act on National Taxes.

◇ Recent administrative rulings

※ Whether arm's length interest is included in overseas source income to which foreign tax credit applies (Oct. 22, 2018)

- Where a domestic company lent funds to an overseas subsidiary and calculated the arm's length rate as prescribed by Article 6 (7) of the Enforcement Decree of the Adjustment of International Taxes Act based on tax adjustment by arm's length price as prescribed by Article 4 of the Adjustment of International Taxes Act, the amount calculated as income shall be included in overseas source income subject to the regulations of foreign tax credits pursuant to Article 57 (1) of the Corporate Tax Act and Article 94 (15) of the Enforcement Decree of the same Act.

※ Scope of reporting of overseas financial account (Oct. 8, 2018)

- Where a resident provides labor and, as part of his/her annual salary, is granted the right to receive stocks or cash if certain conditions are met in the future, and the received stocks or cash are deposited as balance in an overseas financial account opened in an overseas financial institute, the overseas financial account is subject to reporting as prescribed by Article 34 of the Adjustment of International Taxation Act.

When assessing an administrative fine for failure of reporting, if there exists a reason to believe that a failure of reporting occurs due to a minor mistake, including an error in aggregating the balance of the accounts held, the relevant person may be exempted from the administrative fine as prescribed by Article 51 (7) of the Enforcement Decree of the same Act.

For more information, please contact the International Tax Resource Management Office of the National Tax Service (82-44-204-2873~75).