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Taxes on Fringe Benefits for Expatriates Working in Taiwan

A number of rulings relating to fringe benefits should be taken into account when conducting tax planning for expatriate employees in Taiwan. Some fringe benefits are tax-free for all expatriates, while others are only tax free for a certain group of expatriates as defined in tax ruing Tai Tsai Sui 09600511820. Please refer to the Fringe Benefits Table below for a quick summary.

Tax-free fringe benefits available for all expatriates include the following:
- A meal allowance of up to TWD 1,800 per month
- Airfare for arrival in Taiwan and return to the expatriate's home country
- Repairs and maintenance expenses incurred for a leased residence
- Furniture
- Scholarships for dependent children of the expatriate

Tax ruling Tai Tsai Sui 09600511820 came into effect on 1 January 2008 and was later superseded by tax ruling Tai Tsai Sui 09804119810 on March 12, 2010. The latter ruling states that expatriates (as defined under the rulings for foreign professionals) working in Taiwan may enjoy the following extra fringe benefits tax-free, subject to being able to meet prescribed conditions:

- Airfare for the expatriate and dependents to come to Taiwan and return to their home country
- Home leave vacation pay after having worked for a specified period
- Moving expenses
- Utilities
- Cleaning expenses
- Telephone expenses
- Rent
- Household renovation
- Children's education expenses.

An employer can book any of the above as company-deductible expenses, and they will not be treated as taxable fringe benefits for expatriates.

To qualify for the above, all of the following conditions must be met.

- The fringe benefits listed above need to be documented in the employment contract, and the expenses must be paid by the employer directly. Receipts and invoices should be issued to the employer, not the expatriate employee.

- The expatriate's work must be of a technical or specialized nature, or the expatriate must work in the capacity of supervisor or above for an approved industry as defined in Items 1 and 2, Section 1, Article 46 of the Employment Service Act and other related Regulations.

- The annual taxable salary from both Taiwan and foreign employers for the expatriate must exceed TWD 1.2 million (The Ministry of Finance may approve a request to waive the minimum salary requirement on a case-by-case basis as it deems appropriate).

- The expatriate employee must have a valid Taiwan work permit and be a Taiwan tax resident (meaning that the expatriate resides in Taiwan for more than 183 days in the taxable year).

- The employer should file a "Statement of Foreign Employee Expenses" together with its year-end corporate income tax return.

- If the employer is not required to file a corporate income tax return, then the employer should file a "Statement of Foreign Employee Expenses" before the end of January of the subsequent year together with the annual withholding tax filing.

- This ruling applies to expatriates, excluding those who are dual citizens of Taiwan and any other country.

Approved industries per tax ruling Tai Tsai Sui 09804119810 include:

1. Construction/maintenance/architecture;
2. Transportation;
3. Finance/tax/banking services;
4. Real estate brokerage;
5. Immigration services;
6. Attorney/patent attorney/legal services;
7. Technician;
8. Medical/health care;
9. Environmental protection;
10. Cultural, sports and recreational services;
11. Academic research;
12. Veterinarian;
13. Manufacturing;
14. Wholesale;
15. Overseas Chinese or director/manager/executive of foreign-invested or established enterprise approved by the Taiwan government;
16. Operations management, design, planning or consultation for professional, scientific or technical services industries;
17. Restaurant chef;
18. Other industries designated by the Council of Labor Affairs in consultation with the central competent authorities.

Tax Equalization

The principle behind a "tax equalization policy" is that the expatriate employee will not suffer a financial hardship as a result of the tax consequences of an international assignment.

In the past, in order to compensate expatriate employees for the "tax effect" of their international assignment, many companies simply choose to pay personal income tax on behalf of the expatriates working in Taiwan. This practice was common prior to 2009 and would not, at that time, constitute taxable benefits for expatriates.

Effective from 1 January 2009, tax subsidies paid by employers for expatriate employees are treated as taxable benefits. Accordingly, there are two possible methods to perform tax equalization for expatriates working in Taiwan.

Option 1: Benefits not documented in the employment contract

According to Tax Ruling Tai Tsai Sui 09804119811, if a tax subsidy granted to an expatriate employee is not documented in the employment contract, the subsidy paid cannot be recognized as a tax-deductible expense for the company. Furthermore, the expatriate employee will still need to recognize the amount of subsidy received as other income and will be subject to personal income tax in the year that the personal income tax return is filed.

For example, consider an expatriate employee whose desired net take-home pay for 2013 is TWD 5,000,000. Assume that the person is single with no dependents, and he elects to use the standard deduction when filing his personal income tax return.

2013 personal income tax payable at the time of filing by the end of May 2014 is TWD 1,086,200. If the employer were to pay the TWD 1,086,200 for the expatriate employee, then the expatriate employee's total income for 2014 would become TWD 5,000,000 + TWD 1,086,200 = TWD 6,086,200. This means that income tax will be charged on the tax subsidy granted in the following year and the year after that. The employer cannot treat the tax subsidy paid as a valid tax-deductible expense.

Option 2: Gross-up approach

According to Tax Ruling Tai Tsai Sui 09804119811, if the tax subsidy benefit is documented in the employment contract, then the employer can take a gross-up approach to increase the gross pay of the expatriate employee so as to ensure that net take-home pay after tax will equal the desired amount. Under this approach, the tax subsidy amount paid can be treated as a valid tax deductible expense by the employer.

For example, consider an expatriate employee with a desired net take-home pay for 2013 of TWD 5,000,000. Assume that the person is single with no dependents, and he elects to use the standard deduction for filing his personal income tax return. If the employer were to adjust his gross pay to TWD 6,810,333 per annum for 2013, the expatriate employee's tax liability for 2013 will amount to TWD 1,810,333. This will effectively result in the expatriate employee being able to have a net take-home pay of TWD 5,000,000 (6,810,333 - 1,810,333). Under this approach, the entire salary expense is tax-deductible for the employer. This approach is more tax efficient and does not involve a carry-forward tax like Option 1 above.

Recommendation

GT recommends that clients re-evaluate their tax equalization policy for Taiwan and reconfirm their preferred approach for carrying out tax equalization here.

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Fringe Benefits Table

Expense Item (Note 1)	Qualified Foreign Professional		Other Expatriate Employees	
	Profit-seeking Enterprise Income Tax	Personal Income Tax Return	Profit-seeking Enterprise Income Tax	Personal Income Tax Return
Meal allowance of up to TWD 1,800 per month	Tax-deductible	Non-taxable income	Tax-deductible	Non-taxable income
Airfare for expatriate and dependents for coming to Taiwan and returning to home country Home leave vacation pay after having worked for a specified period (Note 2) Moving expenses (Note 3)	Tax-deductible	Non-taxable income	Tax-deductible	Non-taxable income
Water, electricity, and gas Cleaning Telephone	Tax-deductible	Non-taxable income	Tax-deductible	Taxable income
Rent (Note 4) Repairs and maintenance expenses incurred for the leased premise	Tax-deductible	Non-taxable income	Tax-deductible	Non-taxable income
Scholarships for children of expatriate (Note 5)	Tax-deductible	Non-taxable income	Tax-deductible	Non-taxable income
Consumables	Tax-deductible	Taxable income	Tax-deductible	Taxable income
Furniture	Tax-deductible	Non-taxable income	Tax-deductible	Non-taxable income
Personal income tax paid on behalf of expatriate employee.	Depends (Note 6)	Taxable income	Depends (Note 6)	Taxable income

Note 1：Fringe benefits listed above need to be documented in the employment contract. Furthermore, employers need to comply with applicable regulations and keep proper supporting vouchers on file.

Note 2：This tax-free benefit does not apply to dependents. Airfare paid for dependants shall be deemed as the expatriate's taxable income and subject to withholding tax.

Note 3：Luggage transportation expenses can be listed as other expenses. Supporting documents need to be kept on file.

Note 4：The employer needs to act as the lessee and sign the lease agreement.

Note 5：Scholarships must be granted based on the children's performance.

Note 6: If the tax subsidy is documented in the employment contract as a benefit that the employer must pay, then it can be treated as a tax deductible expense for the employer. If the tax subsidy is not documented in the employment contract, then it cannot be treated as a tax deductible expense for the employer.