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Tax Update

Withholding Tax Update for Expatriates Working in Taiwan

Towards the end of 2008, the Taiwan Ministry of Finance released tax ruling Tai Tsai Sui 9704542390, which has significant tax impact on expatriates working in Taiwan.

Tax Ruling Tai Tsai Sui 9704542390 requires employers to apply the non-resident withholding tax rate to salaries of expatriates who stay in Taiwan for less than 183 days in a fiscal year. The fact that the expatriate employee may have been in Taiwan for more than 183 days in a prior year is not relevant (The non-resident salary withholding tax rate is 18%, while the resident salary withholding tax rate is 5%).

The Taxation Administration also released a statement that employers have an obligation to ensure that the correct amount of withholding tax is deducted. This means that employers should take the following into consideration before applying the resident withholding tax rate on expatriates working in Taiwan.

- Actual period of stay in Taiwan in a given year.
- Expiry date of work permit/ Alien Residency Certificate and proof of household registration in Taiwan.

Penalty for Applying Incorrect Withholding Tax Percentage

Per Article 114 of the Income Tax Act, employers who fail to withhold the correct amount of withholding tax, in addition to being required to pay the under-withheld amount, are given a fine equivalent to the amount of tax under-withheld.

Penalty for not Filing Withholding Tax Statement within 10 days of Payment Date

Per Article 114 of the Income Tax Act, employers who fail to file withholding tax statements within the proper time limit are given a fine of twenty percent of the tax amount withheld. The amount of the fine, however, shall not be less than NT$ 1,500 or exceed NT$ 22,500.

If a non-resident withholding tax statement is not filed within 10 days of the payment date but is completed prior to end of January of the subsequent year, the penalty can be reduced to 5% of the amount of tax withheld.

Recommended Action

It would be wise for an employer to take a conservative approach by deducting 18% withholding tax on all salaries for expatriates. Employers may switch the withholding tax rate back to 5% after receiving proof of one of the following:

- The expatriate employee's actual period of stay in Taiwan has exceeded 183 days in the given year.
- The expatriate employee has a Work Permit/Alien Residency Certificate that is valid for more than six months from the beginning of the year, and he/she has registered his/her residential address with the District Municipal Office.

Even if an expatriate employee holds a permanent residency permit, he/she can still be deemed a non-resident if he/she does not fulfill one of the conditions listed above.

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