

# Tax Withholding on the Domestic Source Income for a Non-Resident (Korea)

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## **I. Scope of Taxable Income for Non-residents**

### 1. Scope of Taxable Income

#### (1) Resident

All incomes listed in the Income Tax Act in Korea (both domestic and foreign source income)

#### (2) Non-resident

All domestic source incomes enumerated in Article 119 of Income Tax Act in Korea

### 2. Scope of Taxable Income upon the Change of Tax Obligation Status

#### (1) Resident → Non-resident

- ① When a resident becomes a non-resident for the reason that the individual leaves Korea, the taxable income includes both domestic and foreign source income during the period from January 1<sup>st</sup> to the day of departure. The domestic source income which is enumerated in Article 119 of Income Tax Act in Korea is taxable effective the following day of the departure day.
- ② When the individual becomes a non-resident status, but the domestic source income is created after the day of the departure which requires the global taxation in Korea according to the Article 121-2 of Income Tax Act, it should be added to the total income which was created as a resident in Korea for the tax calculation. This case, the tax amount paid as resident status should be deducted as "tax prepaid".

#### (2) Non-resident → Resident

- ① The domestic source income which is enumerated in Article 119 of Income Tax Act in Korea till the previous day of the status change to a resident is taxable income. From the day of the status change to a resident, both domestic and foreign source income become taxable income.
- ② Total income of domestic source income (for global taxation) from the beginning date of the year and till the closing date of the taxable period as a non-resident status and all income created as a resident status should be summed for the tax calculation.

## **II. The Place of Income Tax for Non-resident**

### 1. In Case of Non-resident with a Domestic Place of Business (enumerated in Article 120 of Income Tax Act)

- Domestic business place
- The major business place when it has 2 or more than 2 domestic business places
- The place where a non-resident has filed when the major business place could not be verified
- The place where the Commissioner of the National Tax Service or the commissioner of the competent regional tax office designates when a non-resident has not filed any place.

2. In Case of Non-resident without a Domestic Place of Business (enumerated in Article 120 of Income Tax Act)
  - The place where the domestic source income created
  - The place where a non-resident has filed among the places the domestic source income created when the real estate income, capital gains or forest income are created from 2 places or more than 2 places.
  - The place where the Commissioner of the National Tax Service or the commissioner of the competent regional tax office designates when a non-resident has not filed any place.
  
3. In Case of Tax Withholding
  - ① A resident as a withholding agent
    - The major business place of a resident
    - The place where the tax is withheld, in case the place of withholding tax is not the major business place.
    - The domicile or residing place of resident, in case the business place is not available
  
  - ② An non-resident as a withholding agent
    - The major business place in Korea of a non-resident
    - The place where the tax is withheld, in case the place of withholding tax is not the major business place in Korea.
    - The domicile or residing place of non-resident, in case the business place in Korea is not available
  
  - ③ A corporation as a withholding agent
    - The business place of the headquarter or man office of the cooperation
    - The place of cooperation branch or the other business place, in case it is being handled in own accounting process under the independent profit system (excluding when those places are located in overseas)
  
  - ④ Capital gains from securities transfer
    - For the capital gains from securities transfer of the non-resident, the place of the domestic cooperation where the stock issued is a place of Income tax, in case the domestic business place is not available for withholding agent
  
  - ⑤ Tax association
    - The place of the tax association is a place for Income tax, in case the tax is imposed by association

### III. Taxable Income

The tax could be imposed by Korean tax authority for the incomes which are enumerated by domestic tax laws, when it is not regulated in tax treaty that the income sourcing country is not provided the taxing right or when the taxing right is not restricted by tax treaty.

## 1. Domestic Source Income under the Income Tax Act in Korea

- ① Interest Income
- ② Dividend Income
- ③ Real Estate Income
- ④ Lease Income of Vessels, Aircraft, etc.
- ⑤ Business Income
- ⑥ Personal Service Income
- ⑦ Wage and Salary Income
- ⑧ Retirement Income
- ⑨ Pension Income
- ⑩ Capital Gains derived from the transfer of land or buildings
- ⑪ Capital Gains from Securities Transfer
- ⑫ Other Income

## 2. Type of Taxable Income under the Tax Treaty

### (1) Type of Income under the Tax Treaty

- ① Business Income
- ② International Transport Income
- ③ Dividend Income
- ④ Interest Income
- ⑤ Royalties
- ⑥ Real Estate Income
- ⑦ Capital Gains
- ⑧ Personal Service Income (for entertainers, professor, governmental officer, pension, etc.)
- ⑨ Other Income

### (2) Restriction of Taxing Rights under the Tax Treaty

- ① In case it is not domestic source income under the Tax Treaty despite it is domestic source income under the domestic income tax law, it could not be imposed for tax by Korean tax authority.
- ② The tax could not be imposed by Korean tax authority for any domestic source income of non-resident which is classified as domestic source income by the domestic income tax law and Tax Treaty, if the resident country is provided the taxing rights on those by the Tax Treaty. Also, in case it could be imposed by income sourcing country only when it meets the certain requirements, it could not be imposed by Korean tax authority when it does not meet those requirements
- ③ As it is regulated not to exceed the ceiling tax rate when the tax is being imposed by income sourcing country on the interest Income, dividend Income and royalties, the domestic tax rate could be applied only when the domestic tax rate is lower than the ceiling rate, and when the domestic tax rate is higher than the ceiling rate, the rate up to the ceiling rate could be applied.

(Reference: No.39, 비거주자의 국내원천소득에 대한 소득세과세 \ 인사급여업무사례 \ 신고&세무실무,