



Newsletter

April 2009

This newsletter is prepared by Horwath Choongjung LLC(Choongjung Accounting Corp.) and intended to provide foreign investors with an update on tax law changes in Korea and other related subjects of special interests to foreign investors. The information provided herein should not form a basis of any decision as to a particular course of action, nor should it be relied upon as a substitute for a detailed advice in individual cases.

Topics covered in this edition of Newsletter include

- ◆ **Horwath Choongjung News**
 - ▶ Name Change of Horwath International to Crowe Horwath International
 - ▶ Joining Task Forces for IFRS/Accounting/Auditing Issues led by KICPA and FSS
- ◆ **2009 Tax Law Changes – Presidential Decree**
 - ▶ Tax Deduction allowed for Stock Option Expense paid to Foreign Parent Company
 - ▶ Introduction of Settlement System for Withholding Tax on Independent Personal Service Income of Foreign Company
 - ▶ Introduction of Special Tax Credit for Severance/Retirement Income
 - ▶ Change in Market Interest Rate applicable for Loan provided to Related Party
- ◆ **Tax Treaty Development**
 - ▶ Bilateral Tax Treaty with Qatar
- ◆ **New Tax Ruling / Tax Tribunal Case**
 - ▶ Restriction on Special Tax Treatment for Korean Employees/Officers with Green Card of Foreign Country

Please contact any of the following individuals with any inquiries or comments.

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(You may find this newsletter and other items of interest at <http://www.horwath.co.kr>)

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Horwath Choongjung News

Newsletter April 2009

1. Name Change of Horwath International to Crowe Horwath International

Horwath Choongjung is a sole member firm in Korea of Horwath International, one of the 10 largest global networks of independent accounting and advisory services firms, and Horwath International has changed its name to Crowe Horwath International as part of global branding strategy. The new network name combines the international awareness of the Horwath brand with that of Crowe Horwath LLP, the network's largest member firm in the United States.

Crowe Horwath International member firms share a common purpose of building value for clients through international business and we are unified through a shared commitment for impeccable quality service, highly integrated service delivery processes and a common set of core values and management philosophies that guide our decisions daily.

Crowe Horwath International has more than 140 independent accounting and advisory service firms, 560 offices and 26,250 professionals and staff in more than 100 countries around the world.

2. Joining Task Forces for IFRS/Accounting/Auditing Issues led by KICPA and FSS

Horwath Choongjung has been participating in the Task Force ("TF") run by the Korean Institute of Certified Public Accountants ("KICPA") since January 2009. The TF consists of the representatives from KICPA, Korea Auditing Standards Board, Korea Accounting Standards Board, and the QRM partners of selected accounting firms, covering current issues of accounting and auditing in Korea.

In addition, Horwath Choongjung has been participating as a member in the Cooperative Committee for IFRS which consists of the representatives from the Financial Supervisory Service (FSS) and other related authorities along with other 5 major accounting firms in Korea including Korean member firms of PwC, Deloitte, KPMG, and E&Y. The Committee will handle various inquiries raised by the accounting industry in Korea related to the adoption and execution of IFRS.



2009 Tax Law Changes – Presidential Decree

Newsletter April 2009

We summarized below some of the major changes to keep you up-to-date on tax law changes (Presidential Decree) in Korea.

1. **Tax Deduction allowed for Stock Option Expense paid to Foreign Parent Company**

According to the revised Presidential Decree (“PD”) of Corporate Tax Law (“CTL”), if an employee of a Korean subsidiary (“Subsidiary”) is rewarded the stock options from the foreign parent company (“Parent”) and the Subsidiary pays stock option expenses to its Parent, the stock option related expenses may be deductible from the taxable income of the Subsidiary provided that all the following conditions are met:

The Parent is a listed company and the Subsidiary is not a listed company;

The ownership ratio of the Parent is 90% or more;

The quantity of stock options rewarded does not exceed 10% of total share of the Parent; and

There is a prior written agreement between the Parent and the Subsidiary for reimbursement of stock option related expenses.

This change will be applicable to stock option expenses reimbursed or to be reimbursed on or after February 4, 2009. The similar rule is applicable to the Korean branch.

2. **Introduction of Settlement System for Withholding Tax on Independent Personal Service Income of Foreign Company**

The Korean sourced independent personal service income earned by a foreign company without its permanent establishment (“PE”) in Korea (or with a PE in Korea but the said income is not attributed thereto) shall be subject to withholding tax at 22% (including resident surtax) of service fee in Korea under the CTL unless otherwise exempted under the relevant tax treaty.

Thanks to the recent revision of the CTL, from the service provision commenced or to be commenced on or after January 1, 2009, the foreign company may settle the tax withheld through filing the corporate tax return within three months of the date of service provision completion.

As such, the foreign company may get a refund for the difference between 22% of service fee received and corporate tax (including resident surtax) on taxable income calculated based on regular corporate tax rates by deducting the relevant expenses from the service fees received.



2009 Tax Law Changes – Presidential Decree - continued

Newsletter April 2009

3. Introduction of Special Tax Credit for Severance/Retirement Income

Under the revised Special Tax Treatment Control Law, a special tax credit is applicable for the severance/retirement income effective from March 25, 2009. As such, if an employee retires or is terminated during the year 2009, a special tax credit may be claimed at the rate of 30% with the ceiling of Won 240,000 multiplied by the number of service years.

Even in the case where an employee retired or was terminated during the period of January 1, 2009 thru the effective date of March 25, 2009, he/she may also claim the special tax credit for his/her severance/retirement income tax liability, through filing a final severance/retirement income tax return in May 2010.

The special tax credit rule may not be applicable for severance/retirement income of the following persons:

- Any members of the Board of Directors (BOD), officer, auditor, liquidator, etc.;
- A person who becomes a director or an executive officer;
- An employee receiving the severance/retirement income due to reorganization, merger and acquisition, etc. without actual termination/retirement; or
- An employee receiving severance/retirement income through interim settlement.

4. Change in Market Interest Rate applicable for Loan provided to Related Party

Under the revised PD of the CTL, in the case of lending funds to a local related party, a market interest rate for the foregoing loan transaction can be selected between the following interest rates.

- Weighted-average borrowing interest rate of the lender; or
- Current government posted interest rate of 8.5%

Once a company selects one of the foregoing interest rates, the selected interest rate should be consistently applied going forward. However, if a company selects the weighted-average borrowing interest rate, but cannot apply the weighted-average borrowing interest rate due to lack of its qualified borrowing, it can use the current government posted loan interest rate alternatively.

This change will be effective from the corporate income tax return to be filed after February 4, 2009.



Tax Treaty Development

Newsletter April 2009

1. Bilateral Tax Treaty with Qatar

The tax treaty entered by and between Qatar and Korea on March 27, 2007 came into force since April 15, 2009.

According to the tax treaty, the corporate tax (or income tax) on interest income, dividend, or royalty that is received by a resident beneficiary shall not exceed the following:

Interest income and dividend: 10 % of gross amount of interest income or dividend; and
Royalties: 5 % of gross amount of royalties.

In addition to the foregoing taxes, the Korean resident surtax of 10% on corporate tax (or income tax) shall be additionally applied to Qatari resident.



New Tax Ruling / Tax Tribunal Case

Newsletter April 2009

We summarized below a new case issued by Tax Tribunal recently.

1. Restriction on Special Tax Treatment for Korean Employees / Officers with Green Card of Foreign Country

As to whether special tax treatment (non-taxation on 30% of salary income or a flat 15% taxation on salary income) for foreign employees/officers could be also applicable to a Korean individual holding a green card of a foreign country, the Korean tax authorities have been taking positive stance based on the definition of a foreigner under the Foreign Investment Promotion Act of Korea.

However, the Tax Tribunal of Korea recently changed its stance by ruling that the special tax treatment would not be applicable to a Korean holding a green card stating that a foreigner should be interpreted as a person not having a Korean nationality under the Emigration and Immigration Management Law of Korea (josimseo3462, 2009.1.16).

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