

GMS Flash Alert



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South Korea - Flat Tax and Housing Benefit Changes, Reporting Equity Compensation

South Korea's 2023 Tax Law Amendment Bill ("the Bill"), announced on 27 July 2023, is currently under review by the National Assembly.¹ It is expected to be confirmed towards the end of year after it goes through an extensive legislative process. In this *GMS Flash Alert*, we summarize the key features of the Bill's tax revision proposals for the sunset clause regarding application of the flat tax rate, the tax treatment of the housing support benefit, and the reporting obligations for employers of stock-based compensation exercised or received by their employees if the stock-based compensation is paid by a foreign corporation with foreign controlling ownership.

WHY THIS MATTERS

Tax costs and budgets for inbound South Korean expatriates will likely be reduced by the extension of the sunset clause regarding the flat tax rate application and exclusion of housing support benefit from reportable employment income for foreign workers who elect to apply the flat tax rate.

The changes described below should be considered when evaluating international assignment costs and budgets for assignees sent into and out of South Korea.

The sunset clause regarding application of the flat tax rate as of 31 December 2023, is being extended to 31 December 2028. Under the Bill, a foreign worker who first begins to provide labor in South Korea on or before 31 December 2028, can elect to have the 19-percent flat tax rate (20.9 percent including local income tax) applied to his/her employment income until the taxable period that ends within 20 consecutive years from the date the foreign national first provides labor in Korea. Other statutory components of the flat tax remain intact. (Please refer to [GMS Flash Alert 2023-064](#) (27 March 2023) for more details on the flat tax.)

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All foreign employees can elect to apply the flat income tax rate to their employment income earned from 2023, at least up to 2033 if they are in a more advantageous position with the flat tax rate than the regular, progressive tax rate.

If a foreign national employee – or his/her employer – has questions about eligibility for claiming the flat tax rate versus being taxed according to the regular, progressive tax rates, and how the five-year election limitation expansion to 20 years affects him or her, that employee should contact his or her qualified tax professional or a member of the Global Mobility Services team in South Korea (see the Contacts section).

Exclusion of Housing Support Benefit from Reportable Employment Income

Housing support in South Korea has been classified as a non-taxable welfare benefit effective as of January 2021, whereas it was considered as a tax-exempt benefit to employees previously. It posed a significant drawback to foreign employees who elect to apply the flat tax rate to their employment income tax filings in South Korea since tax deductions, reductions, exemptions, and tax credits related to income tax under the Income Tax Act shall not apply where the flat tax rate has been applied. Previously, it was amended to extend its grace period so that such housing support would remain tax exempt in South Korea until 31 December 2023, for foreign employees who elect to apply the flat tax rate.

Under the Bill, the housing support benefits will be removed from reportable employment income permanently for foreign workers who elect to apply the flat tax rate to their employment income tax filings, provided that the required conditions are fully satisfied. The conditions for the housing support to be qualified are as follows:

- The rental contract has been signed between the employer and the lessor;
- The entire rental payments have been made directly to the lessor by the employer (and not through the employee/assignee concerned and he/she does not bear any portion of such costs); and
- The housing facility is a regular residential house/apartment (as opposed to a hotel or serviced apartment).

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As an incentive to attract more foreign workers into South Korea, the Bill will help ensure that housing support benefits remain non-taxable with application of the normal progressive tax rates and are to be removed from the reportable employment income permanently with application of the flat income- tax rate. This will ultimately mean that the housing support benefits are tax exempt for all foreign employees regardless of the application of the flat tax rate when the conditions are met.

Stock-based Compensation Transactions – New Filing Obligation of Domestic Corporation or Domestic Place of Business of Foreign Corporation

It will now be required for domestic corporations or domestic places of business of foreign corporations to report details of stock-based compensation exercised or received by their employees if stock-based compensation is paid by a foreign

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corporation with foreign controlling ownership. Details to report to the South Korean tax authority include grant/exercise/payment schedules and details, exercise/payment profit, employee personal information, etc. for stock-based compensation exercised or received from 1 January 2024. The filing is due by 10 March of the following year.

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A foreign corporation with foreign controlling ownership includes:

- For employees of a domestic corporation – a foreign corporation that directly or indirectly owns 50 percent or more of the stock of a domestic corporation;
- For employees of a domestic place of business of the foreign corporation:
 - Headquarter and branch of a foreign corporation, or
 - A foreign corporation that directly or indirectly owns 50 percent or more of the stock of another foreign corporation.

Stock-based compensation is defined as stock options and similar rights to acquire or purchase stocks of a foreign corporation with foreign controlling ownership at a pre-determined price. It is provided in the form of stocks or in money equivalent to the stock value of a foreign corporation with foreign controlling ownership in accordance with the operating standards for stock-based compensation prepared in advance.

FOOTNOTE:

1 2023 년 세법개정안 .

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Contact us

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