

## **Taxability of expatriate benefits: Some key issues**

Human resource managers at multi-national companies in India often struggle with many key issues that are ambiguous for tax treatment of expatriate employees. However, to everyone's relief, many of such contentious issues have been addressed by the Delhi High Court in its recent ruling (Yoshio Kubo vs CIT).

The ruling upheld that the tax paid by the employer on behalf of the employee constitutes a non-monetary perquisite in the hands of the employee, making it eligible for exemption under Section 10(10CC) of Indian Income Tax Act. As a result, the employer can pay tax on behalf of the employee on non-monetary perquisites with a single gross up instead of multiple gross up.

The court further clarified that tax paid by the employer is also excluded from the definition of salary for the purpose of valuing accommodation benefit provided by the employer to the employee.

On the issue of taxability of the amount paid by a foreign employer to overseas pension funds, social security, etc, it has been held that the employer's contribution to such funds is not taxable when the contribution does not result in a direct present benefit to the employee, but assures him of the future benefit in the event of a contingency.

The court also re-affirmed the principle laid down by the Bombay High Court, which stated that hypothetical tax denotes the sum of money withheld by the employer to fulfil the commitment of paying a net salary to the employee and is, therefore, deductible from the taxable salary of the employee.

On the taxability of legal expenses (such as fee for the tax return preparation, etc) paid by employer for tax-compliance of the employee, the court ruled that such sums paid are expenses of the employer since it was the contractual obligation of the employer to handle the tax-related matters of the employee and, hence, non-taxable in the hands of the employee.

There are cases where the tax paid by the employer on behalf of the employee exceeds the actual tax liability. The ruling clarifies that the refund of excess tax to employee is not taxable in the hands of the employee if, under the contractual obligation, the amount of refund received by the employee is due to the employer.

The issues addressed by the court ruling have a wide impact on the tax implications of expatriates seconded to India. The ruling provides greater clarity on the contentious issues resulting in saving of tax cost and advisory costs for the employers.

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