Korean Tax Update
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Government Announces Tailored Measures to Stimulate Economic Recovery

The government has announced a series of plans to boost investment growth, support the construction sector, and stimulate private sector consumption. Additionally, specific tasks have been unveiled to ensure effective implementation of these plans. Key tax measures as part of these tasks are summarized below:

Accelerating Investment Recovery

- The end of the application period for tax credits on national strategic technologies will be extended by three years from December 31, 2024 to December 31, 2027.
- Temporary investment tax credits for small and medium-sized enterprises (SMEs) and middle-scale companies will be extended by one year, with a permanent increase in the additional tax credit rate for incremental investment expenditures.

Bolstering the Construction Sector

Tax Relief for Land Contributions and Acquisitions

- Capital gains tax deferral for in-kind contributions of land to publicly-offered real estate investment trusts (REITs) will be considered
- A reduction of capital gains tax arising from the transfer of land used in constructing public housing to be purchased and rented by public rental housing businesses will be extended for three additional years from December 31, 2024 to December 31, 2027.

Support for Housing Construction Businesses

- Unsold new houses owned by construction companies are excluded from the tax base in calculating the comprehensive real estate tax for seven years, a two-year temporary extension from five years.
- Up to 50% reduction in acquisition tax will apply to the original acquisition of unsold new apartments (85㎡ or less, valued at KRW 300 million or less) if they are used as rental housing. Eligibility requires construction completion between January 2024 and December 2025, with a rental agreement of at least two years signed by December 2025.

Tax Benefits for Purchasers of Unsold New Housing in Local Areas

- An unsold new house (85㎡ or less, valued at KRW 600 million or less) purchased between January 10, 2024, and December 31, 2025 will not be included in the number of houses owned in calculating the comprehensive real estate holding tax and capital gains tax, and will be eligible for the special tax treatment for a household owning one house.
- If an unsold new house (85㎡ or less, valued at KRW 600 million or less) is acquired and rented for at least 5 years, 50% of capital gains arising from the transfer of the house for 5 years from the date of acquisition are not subject to capital gains tax, provided that the acquisition occurs between August 28, 2024, and December 31, 2025.

- Corporate restructuring REITs purchasing unsold new houses in local areas will be subject to a normal range of acquisition tax rates of 1% to 3%, rather than a heavy acquisition tax rate of 12%, applicable to acquisitions from March 28, 2024, to December 31, 2025. These houses will also be excluded in calculating the comprehensive real estate holding tax base for five years after acquisition.

Stimulating Private Consumption

- The income deduction rate for traditional market consumption will increase from 40% to 80%, with an additional rate increase from 10% to 20% for spending above a certain threshold.
- Expenditures paid with government-issued gift coupons (*Onnuri* gifts) will be eligible for a deduction of corporate business promotion expenses (formerly, entertainment expenses) under a special tax treatment, effective for expenditures incurred after 2024. These coupons aim to boost sales in traditional markets and by micro businesses.
- The sunset date of the current quota tariffs on kimchi cabbage, radish and carrots will be extended from the end of October (kimchi cabbage and radish) and the end of September (carrots) to the end of this year. The sunset date of the current quota tariffs on 10 imported fruits (banana, pineapple, avocado, mango, mangosteen, grapefruit, cherry, kiwi, durian, mandarin) will also be extended until the end of the year.

Government's Bill to Amend Presidential Decrees of Five Tax Laws

The Ministry of Economy and Finance has announced proposed amendments to the Presidential Decrees of five tax laws, including the Corporate Income Tax Law. These amendments aim to implement various policies and measures announced this year, such as addressing low birth rates, setting economic policy directions for the second half of the year, establishing growth ladders, and stabilizing public livelihoods. After review and approval in vice-ministerial and cabinet meetings, these amendments are scheduled to be promulgated and enforced in November 2024. Below are the key highlights of these proposed amendments:

Presidential Decree of the Individual Income Tax Law

- Couples acquiring a second home upon marriage shall be treated as a household owning a single home for capital gains tax purposes for an extended period of 10 years.
- Extend the period for special capital gains tax treatment for qualifying housing under a prescribed mutual benefit rental arrangement until December 2026, a two-year extension from December 2024.
- New small non-apartment houses shall not be included in the number of houses owned for capital gains tax purposes for two additional years, extended from December 2025 to December 2027.
- Designate the National Health Insurance Service as a data collection agency to reduce the administrative burden of submitting required documents for tax credits.

Presidential Decree of the Corporate Income Tax Law

- A corporation shall be exempt from additional corporate tax (10%) on capital gains from the transfer of land to a public rental housing construction companies until December 2027, a three- year extension from December 2024.

Presidential Decree of the Special Tax Treatment Control Law

- The grace period for companies, which came to exceed the criterion of SME in scale, would be increased from three years to five years (seven years for those listed on the Korea Exchange or KOSDAQ).
- Set out detailed provisions necessary for VAT refunds for taxis, including the eligible scope, procedures, and required documents for refunds.

Presidential Decree of the Value Added Tax (VAT) Law

- Apply the VAT exemption on goods provided by companies to employees during Lunar New Year and Chuseok, separate from other welfare expenses, up to KRW 100,000.

Presidential Decree of Comprehensive Real Estate Holding Tax

- Couples acquiring a second home upon marriage shall be treated as a household owning a single home for comprehensive real estate holding tax purposes for an extended period of 10 years.
- New small non-apartment houses shall not be included in the number of houses owned for comprehensive real estate holding tax purposes for two additional years, extended from December 2025 to December 2027.
- Upward adjustment, from KRW 600 million or less to KRW 900 million or less, of the threshold for the price of public rental housing purchased by the state-run Korea Land and Housing Corp. which is not included in the comprehensive real estate holding tax base.

Government Seeks to Attract Overseas Talent in High-Tech Industries with 10-Year Earned Income Tax Reduction

In an effort to enhance the competitiveness of high-tech industries, including semiconductors, the government has announced a new strategy aimed at attracting overseas talent. This strategy proposes a 50% reduction in earned income tax on wages and salaries for qualifying overseas professionals for a period of 10 years. As part of this initiative, the government plans to establish the "K-Tech Pass Program," which targets top-tier overseas talent holding a master's or doctoral degree from the global top 100 science and engineering colleges. The goal is to attract 1,000 such professionals by 2030. To help retain this talent after their settlement in the country, the government is also considering including those eligible for the "K-Tech Pass Program" in the scope of foreign engineers who are eligible for a 50% reduction in earned income tax for 10 years.

NTS Investigation Targets Rebates in Construction, Pharmaceuticals, and Insurance Brokerage Sectors

The National Tax Service (NTS) is intensifying its efforts to combat tax evasion by launching investigations into 47 companies across three critical sectors: construction (17 companies), pharmaceuticals (16 companies), and insurance brokerage (14 companies). These sectors are under scrutiny due to the explicit prohibition of rebate receipts by relevant laws. The NTS aims to impose corporate income tax on companies that have paid rebates and will also levy individual income tax and other applicable taxes on individuals who have received such rebates.

This includes construction project developers, medical professionals, and owners or their related parties of corporate insurance subscribers. Key examples of rebate payments in the three major industrial sectors include:

Construction:
- False Salaries: Rebates are paid in forms of false salaries to individuals who are related parties of the client.
- Expense Born: Rebates are given through expenses born on behalf of the client.
- Non-existent Services: Rebates are offered directly or indirectly through the payments for services that have not been rendered.
- Inflated Payment: Rebates are paid back by subcontractors after inflated contract amounts are paid to the subcontractors.

Pharmaceuticals:
- Personal Expenses: Wedding costs, honeymoon trips, and hotel fees are paid on behalf of medical professionals.
- Goods and Appliances: Rebates are given in forms of home appliances, furniture, and other goods offered to medical professionals and hospitals.
- Cash Equivalents: Rebates are provided through cash equivalents like gift certificates and cash advances based on a fake credit card transaction to medical professionals.
- High Commissions: Rebates are paid using funds created from unusually high commissions paid to chief sales officers.

Insurance Brokerage:
- False Agent Registration: Rebates are provided by falsely registering the owners of the subscribing corporation or their spouses as insurance agents and paying them commissions.
- Family Members: Rebates are given by falsely registering the children of the owner of the subscribing corporation as insurance agents and paying them commissions.
- Relatives: Rebates are provided by falsely registering siblings or other relatives of the owner of the subscribing corporation as insurance agents and paying them commissions.

Foreign Financial Accounts Filed Record a 65.2% Decline, Totaling KRW 64.9 Trillion This Year

This year, a total of 4,957 individuals reported foreign financial accounts, amounting to KRW 64.9 trillion, according to the National Tax Service (NTS). Compared to the previous year, the number of reporting individuals and the filed amount decreased by 462 individuals (8.5%) and KRW 121.5 trillion (65.2%), respectively. The decline in both the number of individuals and the reported amount is primarily attributed to a significant reduction in the reporting of overseas virtual asset accounts, which stemmed from the depreciation of virtual assets. Notably, since virtual asset accounts were first included in the scope of the reporting requirements last year, the number of individuals reporting these accounts and the reported amount have decreased by 389 individuals (27.2%) and KRW 120.4 trillion (92%), respectively.

Tax Revenue Declines by KRW 9.4 Trillion to KRW 232.2 Trillion in the First Eight Months of 2024

According to data released by the NTS, tax revenues amounted to KRW 232.2 trillion from the beginning of January 2024 to the end of August 2024. This figure represents a decline of KRW 9.4 trillion compared to the same period in the previous year. The primary reason for this decline was a significant drop in corporate tax collections, which fell by KRW 16.8 trillion due to poor corporate performance last year. In contrast, value-added tax (VAT) revenue increased by KRW 7.1 trillion, driven by recovering consumer spending and reduced VAT refunds. Individual income tax collections saw a slight decrease of KRW 0.1 trillion compared to the previous year. This decrease was attributed to an upward trend in earned income tax, fueled by rising employment and wages. However, this was offset by decreases in capital gains tax and comprehensive real estate holding tax collections. Additionally, despite a slight increase in the amounts of stock trading, securities transaction tax collections decreased by KRW 0.7 trillion primarily due to tax rate cuts.

KCS Requires Advance Approval for the Suspension of Customs Investigations.

The Korea Customs Service (KCS) has introduced a new scheme mandating that the Taxpayer Advocate's approval is necessary to suspend ongoing customs investigations. This scheme is designed to better safeguard taxpayers' rights and interests. The system addresses the issue of prolonged investigation periods that taxpayers often face due to repeated suspensions. Specifically, if an investigation team suspends an investigation more than three times (excluding suspensions requested by the taxpayer), the suspension must be reviewed and approved in advance by the Taxpayer Advocate. This scheme aims to ensure a fair and swift verification process for customs compliance and cooperation. It is part of the broader initiatives announced by the KCS last February under its transformation projects, which aim to establish a more efficient and transparent customs investigation process through the introduction of the Smart Customs Investigation System.

Changes in Tax Laws

Amended Presidential Decree of the Individual Income Tax Law

Background of Amendment and Key Points

The recently amended Presidential Decree of the Individual Income Tax Law introduces a change to the taxation of collective investment vehicles. Under this amendment, if collective investment vehicles (funds) acquire stocks, beneficiary certificates of domestic exchange-traded funds (ETFs) that track indices based on foreign listed stocks, exchange-traded notes (ETNs), or exchange-traded derivatives based on the performance of these securities, the gains or losses from trading or valuation of those securities will be included in the taxable income of these collective investment vehicles. This change aims to enhance tax fairness between direct and indirect investments in foreign listed stocks. Additionally, the amended decree seeks to promote a stable housing supply for young people, etc. by including urban residential housing of a prescribed scale in the category of newly-built small houses. These houses are not subject to heavy capital gains tax rates applicable to owners of multiple housing properties. (Proclaimed and enforced on September 10, 2024)

Amended Presidential Decree of the Comprehensive Real Estate Holding Tax Law

Background of Amendment and Key Points

The amendment to the Presidential Decree of the Comprehensive Real Estate Holding Tax Law is designed to promote housing stability for young people, etc. by facilitating the supply of urban residential housing. This amendment includes urban residential housing in the category of small newly-built houses that are excluded from the count of houses when calculating comprehensive real estate tax for housing. (Proclaimed and enforced on September 10, 2024)

Amended Enforcement Rules of the Comprehensive Real Estate Holding Tax Law and Amended Enforcement Rules of the Individual Income Tax Law

Background of Amendment and Key Points

The amended Enforcement Rules of the Laws aim to support the stable supply of housing. These rules exclude unsold new houses located outside designated metropolitan areas, which are leased before being sold by housing construction companies, from the category of houses subject to heavy capital gains tax rates applicable to multiple homeowners. Additionally, these houses will not be counted in the number of houses when calculating the comprehensive real estate tax for housing. (Proclaimed and enforced on September 10, 2024)

Rulings Update

Whether the deemed acquisition tax liability would arise if an existing shareholder became a controlling shareholder due to a capital reduction of the company

According to Article 7(5) of the Local Tax Law (LTL), where a shareholder becomes a controlling shareholder of an unlisted company by acquiring more than 50% of the shares in the company, it shall be deemed to have acquired the company's assets that are subject to acquisition tax, and thus, be subject to deemed acquisition tax. Also, under Article 11(2) of the Presidential Decree of the LTL, where the controlling shareholder acquires additional shares in the company, resulting in an increase in its shareholding ratio in the company, it would be deemed as having acquired the company's assets additionally by the increased portion and be subject to deemed acquisition tax. The central issue in this ruling is whether the deemed acquisition tax liability would arise where an existing shareholder became a controlling shareholder due to an increase in its shareholding ratio over 50% as a result of the company's capital reduction in which the shareholder did not participate.

The Ministry of Interior and Safety (MOIS) has clarified that if an existing shareholder became a controlling shareholder of a company due to an increase in its shareholding ratio as a result of a capital reduction whereby the company reduced the shares held by other shareholders for consideration paid, the deemed acquisition tax liability would not arise as there was no acquisition of additional shares by the existing shareholder. (Real Estate Tax Policy Division of the MOIS-2606, 2024.7.30) This ruling issued by the MOIS aligns with precedent Supreme Court decisions and authoritative interpretations, which state that if a person becomes a controlling shareholder due to the company's purchase of treasury stock, retirement of shares, or capital reduction without consideration, while the person does not acquire additional shares, the deemed tax liability would not arise to the person. (Real Estate Tax Policy Division of the MOIS-2867, 2023.8.1, Daebeop2010du8669, 2010.9.30) These rulings appear to take the view that the deemed acquisition tax liability of the controlling shareholder due to an increase in its shareholding ratio should be based on the actual acquisition of shares or interest by the shareholder.

Observation: In another case, the Tax Tribunal has decided that where a person, who has already become a controlling shareholder due to the company's purchase of treasury stock, acquires additional shares, the acquisition of additional shares would not trigger a deemed acquisition tax if there were no increase in its shareholding ratio after the share acquisition. (Joshim2022ji0780, 2023. 8. 31.) In this regard, it is understood that the deemed acquisition tax liability may arise only if both of the following conditions, among others, are met: i) acquisition of shares, and ii) an increase in the shareholding ratio due to the acquisition of shares. As such, if there is only an increase in the shareholding ratio without the acquisition of shares, or if shares are acquired but there is no increase in the shareholding ratio, the deemed acquisition tax liability for a controlling shareholder would not be triggered according to the MOIS interpretation and the Tax Tribunal decision.

Whether the proceeds from the sale of properties contributed to public-interest corporations would be subject to gift tax

Under the Inheritance and Gift Tax Law (IGTL), the value of property contributed to a public-interest corporation, etc. shall not be included in the taxable value of gift tax. However, if the proceeds from the sale of such contributed property (excluding assets increased by the sale proceeds, public charges, etc., as prescribed by the Presidential Decree) are used for purposes other than public interest purposes, or are not used for public interest purposes within three years after the sale, gift tax would be imposed under Article 48(2)(4) of the old IGTL, effective prior to the amendment of the IGTL at the end of December 2007 ('the provision at issue')

The case in question involves a school corporation that acquired real estate through purchase or new construction and held the real estate as income-generating purpose assets. In a later year, the school corporation sold the real estate, and extended a portion of the sale proceeds as loans to its affiliated company. The central issue is whether it would be appropriate to impose a gift tax by considering the proceeds from the sale of the contributed property as having been used for purposes other than public interest proposes under the provision at issue.

The recent Supreme Court ruling clarified that the term "contributed property" in the provision at issue refers exclusively to property directly gifted to public interest corporations, while it does not include: i) property acquired with the contributed property; ii) property acquired with the proceeds from the sale of the contributed property; or iii) property acquired with the income from operating the contributed property. The court emphasized that "contributed property" would refer solely to tangible assets other than cash, which can be sold. Therefore, proceeds from the sale of real estate acquired by the school corporation through purchase or new construction, rather than through gift, would not be considered the "proceeds from the sale of contributed property" under the provision at issue. Consequently, the Supreme Court decided that the imposition of gift tax on the school corporation should be revoked. (*Daebeop2021du54293, 2024.9.13*)

Observation: This ruling is significant as it is the first decision to limit the scope of "contributed property" under the provision at issue solely to property directly gifted to public interest corporations. This is contrary to previous authoritative interpretations, which included: i) proceeds from the sale of the originally contributed property; ii) proceeds from the sale of property acquired with the income generated from operating the originally contributed property; and iii) proceeds from the sale of property acquired with the proceeds from the sale of the originally contributed property. (*Section 48-38-8 of the administration guidance to enforce the IGTL, Written Internet Consultation Team 4-2755, August 10, 2006, among others*). The recent decision made it clear that if a public-interest corporation sells property that was either acquired with proceeds from the sale of originally contributed property or purchased using income generated by the contributed property, and then uses the sale proceeds for non-public interest purposes, it should not be subject to gift tax on the contributed property.

Whether the company can claim both the tax reduction for foreign investment and the second-year tax credit for employment increase in the same tax year

According to Article 29-7 of the Special Tax Treatment Control Law (STTCL), domestic companies that increase their number of full-time employees during a tax year would be eligible for a tax credit for employment increase in the current tax year and the subsequent tax year (or two subsequent years for SMEs and middle-scale companies). Article 127 of the STTCL addresses the prevention of duplicative tax support. Specifically, Article 127(3) of the STTCL (the provision at issue) states that where a domestic company claims a tax reduction for foreign investment in the same tax year, the domestic company would be only eligible to claim a tax credit for employment increase for the portion corresponding to the domestic shareholders' ratio while it would not be eligible for the tax credit for the portion corresponding to the foreign shareholders' ratio. The main issue of this interpretation is whether a company that claimed a tax credit for employment increase in the first tax year would be prevented from applying for both a tax credit for employment increase in the second tax year and a tax reduction for foreign investment in the same tax year under the provision at issue.

This recent authoritative interpretation clarifies that both the second-year tax credit for employment increase and the tax reduction for foreign investment in the same tax year are subject to the prevention of duplicative tax support under the provision at issue. That said, even if a company claimed the first-year tax credit for employment increase in a prior tax year when there was no tax reduction for foreign investment applied, the company would not be eligible for both the second-year (or the third-year) tax credit for employment increase and a tax reduction for foreign investment in the same tax year under the provision for the prevention of duplicative tax support. (*Standard-2024-Beobgyubeobin-0083, 2024.8.8*).

Observation: Article 127(11) of the STTCL prevents the duplicative application of a tax credit for employment increase under Article 29-7 and an integrated employment tax credit under Article 29-8 in the same tax year. Previous authoritative interpretations allowed companies to claim the second-year tax credit for employment increase and the first-year integrated employment tax credit in the same tax year (*Seomyeon-2023-Beobin-1263, 2023.6.8*). However, the recent interpretation above provides that even if a company claimed the first-year tax credit for employment increase in a prior tax year, the company cannot claim the second-year tax credit for employment increase and the first-year tax reduction for foreign investment in the same current tax year. In this regard, where a company claims a tax reduction for foreign investment in a tax year, special care should be taken to claim employment-related tax credits only for the amount corresponding to its domestic shareholders' ownership ratio, which should exclude the amount corresponding to the foreign shareholders' ratio, in the same tax year.

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