Korean Tax Update
Samil Commentary

September 13, 2024

Table of Contents

Tax News

Ministry of Interior and Safety Announces a Bill to Amend Local Tax Laws

On August 13, the Ministry of Interior and Safety (MOIS) announced a bill to amend local tax-related laws. The proposed amendments focus on four key areas: revitalizing the economy, supporting the stability of public livelihood, fostering a taxpayer-friendly environment, and enhancing an efficient and rational taxation system. These changes are expected to generate an estimated additional budget of approximately KRW 31.3 billion. This will be achieved through adjustments to rates of typically recurring local tax reductions and exemptions, as well as the expansion of local tax incentives for childcare and the introduction of new incentives for housing stability. The bill will be finalized in the cabinet meeting and submitted to the National Assembly in October. If approved, the proposed amendments will become effective on January 1, 2025, unless otherwise specified. Below is a summary of selected key points of the bill.

Basic Local Tax Law

- Currently, the statute of limitation for the local governmental authorities' collection of unpaid local taxes is suspended in any of the cases prescribed in Article 40 of the Basic Local Tax Law (BLTL), which shall include the notice of tax payment and seizure. It is proposed to clarify that the statute of limitation for collection of local taxes would not be suspended in prescribed cases such as where assets prohibited form seizure are seized or third-party assets are seized.

- A taxpayer can file an amended local tax return for a refund request within 90 days from the date the taxpayer became known that any of the prescribed causes occurred even after a filing due date for such a request has passed. It is proposed to clarify the causes prescribed in the Presidential Decree to include the cancellation of a permit or a disposition by the authorities and other specific cases. The proposed provisions are applicable to all local tax items (tax items filed and paid and general tax collection items).

- Currently, if the tax amount involved in an appeal to a local governmental authority is less than KRW 10 million, a person may appoint his/her spouse, a relative within the fourth degree of blood kinship, or a relative of his/her spouse within the fourth degree of blood kinship as his/her agent. Under the proposal, the threshold would be raised to KRW 20 million.

- It is proposed that interest on refunds of local income tax paid would be calculated starting from the day after the local tax payment date, irrespective of whether a tax refund request has been filed. Currently, in the case of a tax refund request, interest on refunds is calculated starting from the day after 30 days from the date of filing a refund request.

Local Tax Law

- It is proposed to abolish individual local income tax on financial investment income, scheduled to be enforced in January 2025. This aligns with the proposed abolishment of individual or corporate income tax on such income.
- The enforcement of local income tax on virtual asset income is proposed to be postponed by two years, from January 1, 2025, to January 1, 2027.
- No penalties will be imposed for failing to file or pay the pro rata business place portion of resident tax until December 31, 2026, extending the previous deadline of December 31, 2024.
- A tax deduction is available for lump-sum automobile tax payments at rates of 5% for 2024 and 3% for 2025. It is proposed to maintain the 5% rate for 2024 and beyond.

Special Local Tax Treatment Control Law

- Acquisition tax and property tax are exempt for real estate acquired for use as childcare centers or kindergartens. Business owners required to establish workplace childcare centers under the Child Care Act can currently receive a 50% reduction in acquisition tax and a 100% exemption from property tax. The proposal would increase the acquisition tax reduction to 100% and extend these incentives by three additional years until December 31, 2027. The acquisition tax exemption will apply to all business owners acquiring property for childcare centers, irrespective of their obligations under the Child Care Act.
- A temporary reduction in acquisition tax is proposed for newly-built small housing (net residential area of 60 square meters or less, except apartments) completed between January 1, 2024, and December 31, 2025. The reduction rate will be 25%, with additional reductions as per municipal government ordinances, capped at 50%.
- The acquisition tax reduction for property acquired during qualified split-offs will be lowered from 75% to 50%. Additionally, it would be clarified that deemed acquisition tax will be exempt when a controlling shareholder acquires shares in a KOSDAQ-listed company.
- Business start-ups in special opportunity development zones are eligible for local tax exemptions or reductions through December 31, 2026, if they engage in specified businesses. The scope of eligible businesses will be detailed in a government circular rather than the law to help expedite investment in non-metropolitan regions.
- The exemption from higher registration and license tax rates for real estate acquired by real estate investment companies and funds will be extended through December 31, 2027. However, this incentive will end as scheduled on December 31, 2024, for real estate acquired by special-purpose companies and corporate restructuring investment companies.

Government Unveils New Rental Housing Supply Plan for the Middle Class and Future Generations

The government has announced a comprehensive long-term public rental housing supply plan aimed at ensuring stable and affordable living conditions for tenants over an extended period. This initiative includes large-scale (over 100 units per housing complex) and long-term (over 20 years) public rental housing projects managed by corporations, including real estate investment trusts. The plan offers various business models—corporate-managed, quasi-corporate managed, and government-supported—allowing businesses to select a public rental housing model that aligns with their goals and circumstances. Provided below are the proposed main tax incentives for the new long-term public rental housing.

	Corporate-managed	Quasi-corporate managed	Government-supported
Outline	• Provide minimal support and reduce bureaucratic restrictions • Exempt from all rent restrictions under the Special Act on Private Rental Housing • Not eligible for incentives such as local tax reductions.	• Subject to public obligations such as tenants' rights to renew lease contracts during a rental period and a 5% cap on rent increases. • Eligible for incentives such as public fund support.	• Subject to intensified public obligations, including a cap on initial rents (95% of market prices) and preferential supply for households without homes. • Eligible for enhanced incentives, including public fund support, loans, and discounted public housing sites.
Tax ıcentives	1) Exclusion from higher acquisition tax, comprehensive real estate holding tax, and corporate income tax	1) Exclusion from higher acquisition tax, comprehensive real estate holding tax, and corporate income tax 2) Additionally eligible for acquisition tax and property tax reduction.	1) Exclusion from higher acquisition tax, comprehensive real estate holding tax, and corporate income tax. 2) Additionally eligible for acquisition tax and property tax reduction.

To qualify for the exclusion from higher tax rates, a mandatory 20-year rental period and rent increase caps by business model must be satisfied. Specifically, qualified rental housing would not be subject to a 12% heavy rate of acquisition tax and a 20% additional corporate income tax, and would not be added to the tax base in calculating the comprehensive real estate holding tax of a rental housing supplier. The thresholds for tax relief from the comprehensive real estate holding tax and corporate income tax above are KRW 1.5 billion for newly-built housing, and KRW 1.2 billion for purchased housing in designated metropolitan areas (KRW 900 million in other areas).

Additionally, reduction rates for acquisition and property taxes based on housing scale are as follows:

- 75% for multi-family housing, officetels, and rental dormitories with net residential area of 60 square meters or less; 25% for net residential area of 85 square meters or less, which are not applicable to purchases of existing housing, etc. and new officetel construction.
- 75% for multi-family housing, officetels, and rental dormitories with net residential area of 40 square meters or less; 50% for net residential areas of 60 square meters or less and 25% reduction for net residential area of 85 square meters or less.

Government Announces Tax Revenue Budget Bill for 2025

The government has announced a national tax revenue budget bill amounting to KRW382.4 trillion for the year 2025. This represents an increase of KRW15.1 trillion compared to the KRW367.3 trillion budgeted for 2024. As one of key components of the increased budget, individual income tax collection is expected to increase by KRW2.2 trillion. This increase will be attributable to wage hikes, employment growth, and higher dividend income which are bolstered by improved corporate results. Corporate income tax revenue is expected to grow by KRW10.8 trillion from the 2024 budget, driven by enhanced corporate performance. The value added tax revenue is expected to increase by KRW6.6 trillion. This rise is projected to be boosted by a growth in private sector consumption and increased revenue collection.

Government to Submit the National Tax Expenditure Plan for 2025 to the National Assembly

In 2023, national tax reliefs, including non-taxation, tax exemptions, tax credits, and income deductions, totaled KRW 69.8 trillion, increasing by KRW 6.2 trillion from 2022. This increase was mainly due to expanded research and development tax credits and higher income deductions for credit card expenditures. For 2024, tax reductions and exemptions are expected to reach KRW 71.4 trillion, a KRW 1.6 trillion rise from 2023, driven by increased deductions for social security insurance premiums and a greater amount of worker/children incentives. In 2025, the tax expenditure plan is projected at KRW 78 trillion, a KRW 6.6 trillion increase from 2024, fueled by growth in integrated investment tax credits due to better corporate results. Additionally, the 2024 tax expenditure plan has been reclassified from 16 categories to 12, aligning with the National Fiscal Management Plan's functional areas to better link tax and fiscal expenditures.

Tax Relief Amounts and Ratios in the Tax Expenditure Plan (KRW in billions, %)

	2023	2024	2025
Tax relief amount (A)	69,766.4	71,430.5	78,017.8
Total tax revenue *1 (B)	370,380.3	394,946.5	412,241.0
Tax exemption ratio [A/(A+B)]	15.8%	15.3%	15.9%
Statutory limit of tax relief ratio**2	14.3%	14.6%	15.2%

* 1 The total tax revenue includes both national and local consumption tax collections. The 2023 figures are based on final accounts, while the 2024 and 2025 figures are based on projected revenue budgets.
** 2 The statutory limit of tax relief ratio is set at 0.5 percentage points above the average tax exemption ratio of the previous three years.

Changes in Tax Laws

Amended Presidential Decree of the Framework Act on SMEs

Background of Amendment and Key Points

Under the recent amendments to the Framework Act on Small and Midsize Enterprises (SMEs) proclaimed on February 27 and effective from August 28, 2024, the grace period for companies exceeding SME criteria has been extended from three to five years. The amended Presidential Decree specifies that if an SME merges with a company regarded as an SME due to the relevant grace period, the merged company retains SME status for up to five years from the following year after it did not satisfy the SME criteria. Furthermore, the 'Integrated Management System for SME Support Projects' has been expanded and renamed as the 'Big Data Platform for SME Support Projects'. (Proclaimed and enforced on August 20, 2024)

Amended Presidential Decree of the Individual Consumption Tax Law

Background of Amendment and Key Points

To alleviate the public burden from high oil prices, the amended Presidential Decree extends the temporary reduction in the individual consumption tax rate for butane among liquefied petroleum gas products by an additional two months from August 31, 2024 to October 31, 2024. (Proclaimed and enforced on August 30, 2024)

Amended Presidential Decree of the Transport, Energy and Environment Tax Law

Background of Amendment and Key Points

To ease the public burden from high oil prices, the amended Presidential Decree extends the temporary reduction in flexible tax rates for gasoline, diesel, and similar alternative fuels by an additional two months through October 31, 2024. (Proclaimed and enforced on August 30, 2024)

Rulings Update

Whether an individual would be regarded as a related party of a corporation where his relatives hold 30% or more but he does not hold any shares in the corporation

The Basic National Tax Law states that an individual is considered to be a related party of a corporation if the individual has a management controlling relationship with the corporation such as a shareholder, among others. The management controlling relationship is considered to exist if the individual can exert controlling influence over the management of the corporation either directly or through a relative or a person with economic association according to Article 1-2 (3)(1) of the Presidential Decree of the Law. Further, the term 'exerting controlling influence over the management of the corporation' includes that an individual, or through a relative, etc., (i) holds 30% or more of the corporation's shares, or (ii) has de facto influence over the management of the corporation such as exercising a right to appoint or dismiss executive officers and deciding the business policy of the corporation, as detailed in Article 1-2 (4)(1) of the Presidential Decree of the Law. A question arises when relatives of an individual hold a 30% or more of shares in a corporation while the individual owns no share in the corporation. The issue is whether the relatives' shareholding of 30% or more alone is sufficient to establish that the individual is a related party of the corporation, or if additional evidence of the individual's de facto influence over the corporation's management is required.

The Supreme Court has provided clarity on this matter. In instances where relatives of an individual directly hold 30% or more of a corporation's shares, it is acknowledged that the relatives have controlling influence over the corporation's management. However, this does not automatically suggest that the individual exerts a similar level of controlling influence on the corporation's management through his relatives. The Supreme Court emphasizes that the burden of proof lies with the tax authorities to demonstrate the individual's de facto influence over the corporation's management. This stance led the Supreme Court to reverse and remand a lower court's previous ruling that the individual is a related party of the corporation solely based on the fact that his relatives hold a 30% or more of shares in the corporation, without considering whether the individual exerted de facto influence over the corporation (*Daebeop 2022Du63386, 2024.7.25*).

Observation: Previously, the Ministry of Economy and Finance (MOEF) had interpreted that an individual was deemed to be a related party of a corporation if his or her relatives held a 30% or more shareholding, suggesting a management control relationship (*Tax Policy Division of the MOEF-759, 2022.7.15*.). However, the Supreme Court's decision has overturned this interpretation, clarifying that such a relationship is only established upon proof of the individual's de facto influence over the corporation if the individual is not the direct shareholder of the corporation. This means that if an individual does not own any shares but if his or her relatives hold 30% or more of the shares in the corporation, a related party relationship between the individual and the corporation is recognized only if his or her exercising de facto influence over the corporation's management is demonstrated.

Method for valuation of a parcel of the land where only part of the land parcel is leased

According to Article 61(5) of the Inheritance and Gift Tax Law (IGTL), any property under lease arrangements should be valued based on either the rent-based valuation ((one year's rent divided by the MOEF-set rate) + security deposit) as per Article 50(7) of the Presidential Decree of the IGTL, or the standard market value (based on the supplemental valuation method, which includes any of the methods prescribed in Articles 61(1)~(4) of the IGTL methods in Articles 61(1)-(4) of the IGTL), whichever is higher. The issue is whether, when only part of a land parcel is leased, the land parcel should be valued based on the valuation for the entire land at the higher of the rent-based amount or the standard market value, or whether it should be based on separate valuations for: (i) the leased portion at the higher of the rent-based amount or the standard market value, and (ii) the non-leased portion at the standard market value.

This interpretation indicates that where only part of a land parcel is leased on the valuation date, the leased portion should be valued based on the higher of the rent-based amount or the standard market value, and the non-leased portion should be valued based on the standard market value. This approach reflects the different value for use between the leased portion and the non-leased portion of the land, ensuring a reasonable valuation. (*Standard-2024-Beobgyujaesan-0025, 2024.6.20*).

Observation: Previous interpretations suggested that if part of a building was leased, the valuation should be based on the higher of the rent-based amount for the entire building (including owner-occupied or vacant parts) or the standard market value (*Internet Written Consultation Team 4-3694, 2007.12.27, and Property Tax Division-859, 2010.11.18, deleted on July 6, 2021*). However, recent interpretations indicate a change in the NTS position: the leased portion should be valued based on the higher of the rent-based amount or the standard market value, while the vacant portion should be valued based on the standard market value, then summed up (*Advance Ruling-2020-Beobryeonghaeseokjaesan-1133, 2021.6.4).* Therefore, under the IGTL, where only part of a land parcel or a single building (not sectioned) is leased, valuations should differentiate between the leased and vacant portions.

Whether the integrated investment tax credit would be eligible for concrete mixer trucks used in manufacturing business

Under the Special Tax Treatment Control Law (STTCL), vehicles and transportation equipment are generally excluded from the scope of machinery and equipment eligible for the integrated investment tax credit ('ITC'). However, certain types of machinery and equipment used for construction purposes, as specified in the Local Tax Law (LTL) (Article 3 and Annex of the Enforcement Rules of the LTL), such as bulldozers, excavators, and concrete mixers, are exceptionally allowed to apply for the ITC (Article 12(3)(3) of the Enforcement Rules of the STTCL.

This case examines the eligibility of the ITC for investment in concrete mixer trucks ('the trucks in question') used by a company for manufacturing, not construction. The trucks are classified as machinery and equipment under both the LTL and the Construction Machinery Management Act. The issue is whether investment in the trucks in question would be eligible for the ITC since they are classified as construction machinery or whether they would be excluded from the ITC unless used in a construction business.

The Tax Tribunal stated that the trucks in question are classified as construction machinery under the Construction Machinery Management Act (Article 2 and Annex 1 of the Presidential Decree), and the taxpayer paid acquisition tax on the trucks as machinery and equipment under the LTL. However, the Tax Tribunal further ruled that the ITC would only be eligible for investment in machinery and equipment directly used in construction business, and that since it has been confirmed the trucks were not used for construction and the taxpayer has not been registered as a construction business per the business registration certificate, the trucks in question would not be eligible for the ITC. (*Joshimien0386, 2024. 7. 22*).

Observation: Companies seeking to claim the ITC for investment in construction machinery like bulldozers, excavators, and concrete mixers should carefully assess their eligibility. Simply paying acquisition tax by classifying the machinery under the LTL does not guarantee ITC qualification. The machinery must be directly used in construction activities, not just listed in their registered business activities, to qualify for the ITC.

Whether the special provision for installment payment would apply for tax on gains from exercise of stock options in case an application is late filed

Under Article 16-2 of the STTCL, executives or employees of qualifying venture firms are exempt from income tax on gains from exercising stock options up to KRW 200 million per year ("non-taxable income limit"). For gains exceeding this non-taxable income limit ("excess gains"), income tax can be paid in installments over five years and in such case, an application for installment payment should be submitted to the tax office via the withholding agent within a prescribed deadline (Article 16-3 of the STTCL). Alternatively, executives or employees of qualifying venture firms may apply for the special tax treatment for taxation on capital gains from the sale of the stocks acquired through the exercise of stock options at a time of sale and non-taxation on exercise gains at a time of exercise if prescribed requirements are met (Article 16-4 of the STTCL).

A question arises regarding whether the special provision for installment payment under Article 13 can still apply for tax on excess gains where the application for installment payment was submitted late due to the taxpayer's misunderstanding that gains from the exercise of stock options were within the non-taxable income limit while the gains in fact exceeded the non-taxable limit.

In this regard, different from a previous ruling of National Tax Service (NTS) (Standard-2017-Beobryeonghaeseoksodeuk-0302, 2018.6.11), the MOEF has issued an interpretation that the special provision for installment payment of tax on excess gains from the exercise of stock options can still apply even if an application for installment payment is submitted later than a prescribed deadline under Article 14-3(2)(5) of the Presidential Decree of the STTCL (Income Tax Division of the MOEF-754, 2024.7.17). This interpretation appears to take the consistent position with the earlier interpretation of the NTS that the special treatment for a tax exemption within the non-taxable income limit could apply to qualifying gains from the exercise of stock options even if a statement on the application of tax exemption on exercise gains is submitted late (Advance Ruling-2021-Beobryeonghaeseoksodeuk-1341, 2021. 10. 27.).

Observation: If individuals who have exercised stock options in a qualifying venture firm fail to meet the deadline to apply for special treatment for non-taxation or installment payment of tax (Article 16-3 of the STTCL), they may still be eligible for the special treatment even if an application is submitted later. However, the special tax treatment for taxation on capital gains (Article 16-4 of the STTCL) would apply only in case the procedural requirements, such as submitting an application form and opening an exclusive account within the prescribed deadline, are all satisfied (*Advance Ruling-2021-Beobryeonghaeseoksodeuk-0602, 2021.4.29*). This interpretation suggests that whether individual income tax would be imposed and whether stock option exercise costs would be deductible, at a time of exercise of stock options, may vary depending on whether or not the individual opts for the special treatment for taxation on capital gains. Therefore, individuals must clearly indicate their decision regarding the special tax treatment for taxation on capital gains when exercising stock options (*Joshim2021-Seo6907, 2022.12.13*) and complete all procedural requirements in a timely manner.

Contacts

Corporate Tax

Michael Kim
+82-2-709-0707
michael.kim@pwc.com

Chang-Ho Jo
+82-2-3781-3264
changho.jo@pwc.com

Baek-Young Seo
+82-2-709-0905
baek-young.seo@pwc.com

Seung-Ryul Lee
+82-2-3781-2335
seung-ryul.lee@pwc.com

Yun-Jung Yang
+82-2-3781-9278
yunjung.yang@pwc.com

Young-Ok Kim
+82-2-709-7902
young-ok.kim@pwc.com

Kyu-Young Han
+82-2-3781-3105
kyu-young.han@pwc.com

Ji-Young Yoon
+82-2-3781-9958
jiyoung.yoon@pwc.com

Il-Gyu Cha
+82-2-3781-3173
il-gyu.cha@pwc.com

Robert Browell
+82-2-709-8896
robert.browell@pwc.com

Jeong-Eun You
+82-2-709-8911
jeong-eun.you@pwc.com

Kyoung-Soon Lee
+82-2-3781-9982
kyoungsoon.lee@pwc.com

Transfer Pricing

Won-Yeob Chon
+82-2-3781-2599
won-yeob.chon@pwc.com

Young-Joo Kim
+82-2-709-4098
young-joo.kim@pwc.com

삼일회계법인 서울특별시 용산구 한강대로 100 (04386)
www.samil.com I Email I 02-3781-3131