

Tax News Flash

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Amendment to Korean Tax Law imposing Enforcement Fines on Taxpayers for Failure to Submit Documents during Tax Audits

In brief

Following the continued efforts of the National Tax Service (NTS) to enforce compliance with the submission of information and documents during a tax audit, an amendment to the Basic National Tax Law (BNTL) was proposed to introduce an enforcement fine on taxpayers for the failure to submit requested information and documents by the NTS during tax audits. On February 27, 2025, the National Assembly approved the proposed amendment to the BNTL, including a new provision imposing enforcement fines, among other amendments. The amendments are expected to be promulgated in March 2025.

In detail

Currently, taxpayers are required to cooperate in good faith with questions and requests for information and documents from the tax authorities. Failure to cooperate may lead to a fine. However, the fine cannot be repeatedly imposed and is limited to KRW 50 million, making it difficult to enforce taxpayer compliance with the submission of information and documents requested by the tax authorities.

Separate from the existing fine, the amended BNTL provides a new provision for the tax authorities to impose an enforcement fine where a taxpayer fails to submit the requested information and documents following a submission order issued by the tax authorities during tax audits. This aims to enforce taxpayers' cooperation and encourage the submission of information and documents requested by the tax authorities in tax audits.

Specifically, under Article 85-7 of the amended BNTL, the tax authorities (i.e., the competent regional tax office of the NTS) may impose an enforcement fine on a taxpayer, subject to the deliberation of the Enforcement Fine Review Committee, if the taxpayer fails to fulfil their obligation to submit books and other documents under tax laws ("Documents") without justifiable reasons during a tax audit. The amended BNTL also provides that before imposing an enforcement fine, the tax authorities must set a reasonable deadline for the taxpayer to submit the Documents and notify the taxpayer that an enforcement fine may be imposed if the Documents are not submitted by the deadline, which must be set to be at least 30 days after the date of notification.

Furthermore, under the amended BNTL, if the taxpayer fails to submit the Documents by the deadline, the tax authorities may impose an enforcement fine on the taxpayer of up to 0.3% of the taxpayer's average daily revenue per day as determined by the Presidential Decree from the day after the deadline. If there is no average daily revenue or it is difficult to calculate the average daily revenue, an enforcement fine of up to KRW 5 million per day may be imposed. The tax authorities may reduce or exempt the enforcement fine imposed, subject to the deliberation of the Enforcement Fine Review Committee, taking into consideration the efforts made to

comply with the submission of the Documents, the degree and reasons for non-compliance, or the results of the tax audit, etc. The procedures for the imposition and reduction of the enforcement fine, details of the Enforcement Fine Review Committee under Article 85-8 of the BNTL, and other necessary matters will be specified by the Presidential Decree.

This amendment will be enforced six months after the date of promulgation and will apply to tax audits that commence after the enforcement date.

Observations

The introduction of the new enforcement fine rules under the BNTL was considered necessary by the tax authorities to establish a legal basis for imposing a sanction against multinational companies that do not properly submit requested information during tax audits, noting that their headquarters are overseas and they could only be liable to pay a fine of up to KRW 50 million.

Following the amendment to the BNTL, the tax authorities are now allowed to impose an enforcement fine when a taxpayer fails to submit the required Documents by the deadline set by the tax authorities during a tax audit. However, it should be noted that the amended BNTL provides only the general rules for enforcement fines on taxpayers. In the absence of detailed decrees and regulations, there is uncertainty over how the enforcement fine rules would be applied during a tax audit in practice.

In this respect, if multinational companies expect their Korean subsidiaries to be subject to tax audits in the near future, it is necessary to be aware and prepare for the potential application of enforcement fines in future tax audits. In addition, companies should continue to monitor the detailed rules of the enforcement fines to be published in the Presidential Decree and other tax regulations, as well as the actual implementation of enforcement fines by the tax authorities during tax audits.

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