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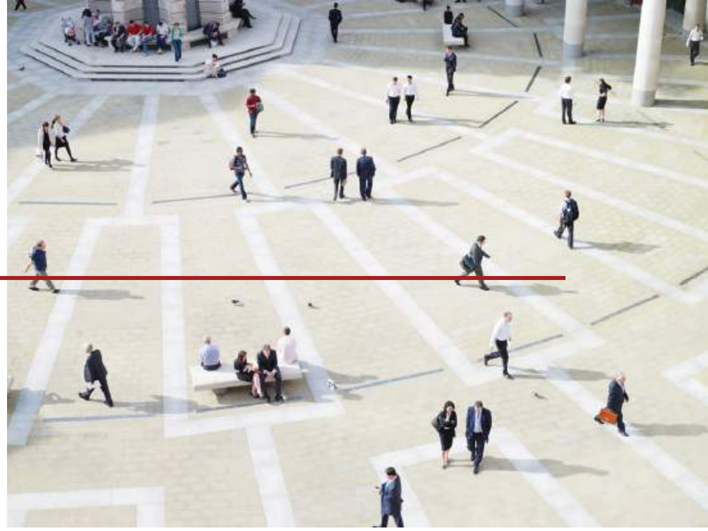

Tax News Flash

Korea's Tax Law Changes for 2016

December 28, 2015

In brief

The National Assembly has recently approved bills to amend eight series of tax laws including the Corporate Income Tax Law and the Value Added Tax Law with some modifications to the government's reform proposals announced by the Ministry of Strategy and Finance last August (for coverage of the reform proposals, see Samil PwC Tax Newsflash, August 6 2015 issue). In a subsequent measure, the Ministry has released bills to amend the Presidential Decrees providing details related to the changes contained in the recently approved tax laws. The proposed Presidential Decrees will be made public for comments until January 26, 2016 and can be subject to minor modifications before being proclaimed at the end of January 2016. Most of the changes recently approved or contained in the proposed Presidential Decrees will become effective from January 1, 2016 unless otherwise be specified.

A summary of the recently revised tax laws and the proposed Presidential Decrees is provided below.

In detail

Corporate Income Tax

Deferred taxation for deemed dividend in a reverse merger between foreign subsidiaries

In a merger where the dissolved company's domestic shareholder receives shares in the surviving company as consideration for its ownership in the dissolved company and the acquisition costs of the shares received exceed the book value of the dissolved company's shares, the difference shall be deemed as dividends to the shareholder.

However, in a reverse merger where a domestic company is merged into its 100% domestic subsidiary, the Corporate Income Tax Law (CITL) allows the tax deferral of the deemed dividends in hands of the shareholder of the dissolved domestic company in order to help facilitate corporate restructuring.
Under a proposed amendment to the Presidential Decree of the CITL, deferred taxation will be extended to the deemed dividends of a domestic shareholder in a reverse merger between a foreign company and its 100% foreign subsidiary if both of the following conditions are satisfied:

- The foreign companies in a reverse merger transaction are corporations established in the same foreign country which has a tax treaty with Korea; and
- The foreign country allows non-taxation or tax deferral on deemed dividends of a domestic shareholder.

This proposed amendment will come into effect for reverse mergers taking place after the amendment is proclaimed.

Changes in deductible company car expenses

The recently amended CITL and IITL include a new deduction rule for expenses relating to company cars provided to officers or employees and introduce new requirements to have appropriate operation records or sufficient evidence to claim the deduction.

Bills to amend the Presidential Decrees of the CITL and the IITL propose details to enforce the deduction rule. Under the proposed amendments, the deduction rule will not apply to vehicles directly used in the business to generate profits in the following industries: transportation, motor sales, leasing and renting of vehicles, driving schools, etc.

The new deduction rule will apply to depreciation expenses, rental or lease fees, fuel expenses, property tax, car insurance, repair expenses, interest expense on financial leases and other expenses incurred for the acquisition and maintenance of company cars. The new deduction rule (effective for the expenditure incurred for the fiscal year starting January 1, 2016; January 1, 2017 for sole proprietor subject to double-entry booking) under the proposed Presidential Decree is as follows:

- A company must purchase (or renew) an auto insurance policy which should limit the scope of covered drivers to a company's officers and employees (or the employees of a subcontractor) and register a covered vehicle with a tax office. If not, the entire expenses relating to company cars will be disallowed for corporate income tax purpose. The recently amended laws abandons an initial proposal to require a taxpayer to attach a corporate or business logo on a company car.

- If the required insurance is enrolled and the operation records for company cars are prepared, the company car related expense multiplied by a business usage ratio (ie the ratio of mileage for business over the total mileage per the operation record) will be allowed as deduction. Details (eg form) on the operation record shall be specified by the National Tax Service. The operation record should be maintained for each vehicle and readily provided to the NTS upon request. While the record should be prepared for an entire fiscal year, it will be allowed to be prepared from April 1, 2016 for 2016.

- In the absence of the operation record, if the required insurance is enrolled, a taxpayer will be allowed to deduct the actual company car related expense or KRW 10 million, whichever is less.

- The deduction of deprecation on company cars (or equivalent depreciation on leased company cars) is limited to the depreciation expense (or equivalent depreciation) multiplied by a business usage ratio, and shall not exceed KRW 8 million a year. The equivalent depreciation will be further specified by the Presidential Rules. Unless a taxpayer maintains the operation record, the business usage ratio will be 100% if the company car related expense is KRW 10 million or less, but the ratio will be computed at KRW 10 million divided by the company car related expenses if the company car related expense exceeds KRW 10 million. The depreciation expense over the limit can be carried forward to subsequent years and deducted when the depreciation expense multiplied by a business usage ratio is less than KRW 8 million.

- When a loss is incurred in a year from the disposal of company cars or the expiration of a lease period, a taxpayer can deduct the loss up to KRW 8 million. The amount in excess of the limit

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can be carried forward to subsequent years (any remaining amount will be entirely deducted in the year that includes the 10th anniversary of the disposal or expiration date).

With respect to the above deduction rule, a taxpayer will be required to depreciate company cars (which are purchased from the fiscal year starting January 1, 2016) over five years under a straight line method. The company car related expense incurred for personal purpose, not business purpose will also be treated as income (eg dividend, bonus) to the user of the company cars.

Specified requirement of independent business division in a qualified in-kind contribution

The recently revised Article 47-2 of the CITL included an additional requirement for a qualified in-kind contribution where the tax deferral on the capital gains arising from the in-kind contribution is allowed. The additional requirement is that the business division that can be separated from a contributing company and independently operated should be taken over by a contributed company.

With respect to this additional requirement, the proposed Presidential Decree specifies that if (i) a business division is primarily engaged in real estate leasing or renting and (ii) contributed assets are real estate and/or shares, the additional requirement of independent business division would not be satisfied. However, exceptions (eg in case of establishing a holding company) will be specified in the decree of the Ministry of Strategy and Finance.

Additional exception to recapture rule in a qualified vertical spin-off

Currently, if the requirements for a qualified vertical spin-off are met, taxation of gains arising from the transfer of assets can be deferred until the shares acquired for the spin-off are disposed. The tax benefits under a qualified vertical spin-off shall be recaptured as if it were an unqualified spin-off in case where i) shares in a new subsidiary created in a spin-off are disposed, or ii) the transferred assets in a spin-off are disposed. As specified in the current Article 84 of the Presidential Decree of the CITL, however, a one-time exception to the recapture rule is granted in the case of (i) a qualified merger between new entities created in a qualified vertical spin-off from the same parent company or (ii) a qualified spin-off of a new entity created in a qualified vertical spin-off.

Under a proposed amendment to the Article 84, this one-time exception will be granted to a qualified spin-off of the existing company which has implemented a qualified vertical spin-off. The proposed amendment will become effective for a qualified vertical spin-off after the amendment is proclaimed.

Weighting on payroll increase for regular youth employees concerning additional tax on corporate earnings reserve

It is proposed that, in calculating payroll increases for the purpose of the additional corporate income tax to facilitate the spending of corporate earnings reserve (*), payroll increases for regular youth employees (regular employee aged from 15 to 29) will be weighted by 1.5, while payroll increases for other employees will not be weighted. Such weighting will be only applicable if the number of the regular youth employees increases.

(*) The CITL was amended in January 2015 to introduce the 10% additional tax on the company whose net assets exceed KRW 50 billion if the company's qualified expenditures (ie investment, wage increase, divided) falls short of a certain threshold. The company should elect one of the following method in computing the additional tax (election valid for three years)

i) {(adjusted taxable income for the year x 80%) – the total amount of investment, payroll increases and dividend payment} x 10%; or

ii) {(adjusted taxable income for the year x 30%) – the total amount of payroll increases and dividend payments} x 10%.

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Extended due date for request of extension for return filing

Under the current CITL, if a company subject to external audit expects that the external audit will not be completed in time and so there will be a delay in book closing, it can request an extension of the filing due date of the corporate income tax return by one month with the payment of interest at 2.5% per annum. Currently, the request must be filed no later than two weeks before the return filing due date. It is proposed that the due date of such request can be filed three days prior to the return filing due. The change will be applicable for requests made after the amended Presidential Decree is promulgated.

Special Tax Treatment Control Law

New tax credit to support youth job creation

The Article 29-5 of the Special Tax Treatment & Control Law (STTCL) has been newly introduced to allow a company to claim a tax credit worth KRW5 million (KRW2 million for a large company) for the increased number of regular youth employees. However, the increased number of regular youth employees eligible for the tax credit is limited to the lesser of the increased number of entire regular employees or the increased number of full-time employees. If there is a decrease in the number of regular youth employees, entire regular employees or full time employees in two years after receiving the tax credit, the tax credit will be recaptured and tax will be assessed at KRW5 million multiplied by the decreased number of regular youth employees, the decreased number of entire regular employees or the decreased number of full-time employees, whichever is the largest.

All corporations but those engaged in certain consumption-oriented service businesses will be eligible for the new tax credit if the specified conditions are met. Under the proposed Presidential Decree, the non-eligible service businesses will include amusement drinking businesses as well as hotels and inns (except for tourist accommodation business) as prescribed in the proposed Decree.

Regular youth employees includes those aged between 15 and 29 as at the end of each month. Regular employees represent those who have signed employment contracts, excluding short-term, part-time, and outsourced employment, officers or executives, and the largest shareholder and its relatives. In addition, the employees whose payment of withholding tax and social security taxes are not substantiated by adequate records will be excluded from regular employees. Full-time employees represent those who have signed employment contracts and do not fall under any of the following categories: i) the term of employment contact is less than one year; ii) working hours agreed with an employer are less than 60 hours a month; iii) officers or executives; iv) the largest shareholder and its relatives; v) employees whose payment of withholding tax and social security taxes are not substantiated by adequate records.

The new tax credit will be available from the fiscal year that includes December 31, 2015.

Unified criterion to determine small-sized company's status

To be consistent with the latest amendments to the Presidential Decree of the Framework Act on Small- and Medium-Sized Enterprises (SMSE), it is proposed that sales revenue will serve as a single criterion to determine the status of a small-sized company, effective for the fiscal year starting January 1, 2016. The previous criteria consisted of the sales revenue (less than KRW10 billion) and the number of full-time employees. The company which was classified as a small-sized company under the existing criteria will maintain its status for the years up to the year when January 1, 2019 belong to.

The changed criteria to determine a small-sized company status will be as follows.

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Business category	Sales revenue
Manufacturing, Electricity, gas or water supply, etc.	KRW12 billion
Agriculture, mining, construction, etc.	KRW8 billion
Publishing, Retailing, wholesaling, etc.	KRW5 billion
Professional, scientific, technical, business service	KRW3 billion
Hotel, beverage and food service	KRW1 billion

Expanded scope of special tax treatment on capital gains of angel investors

Angel investors may enjoy tax benefits for gains derived from investment in certain start-up ventures. Currently, in order for angel investors to qualify for the tax benefits, their investment must be made into a venture enterprise which has started business or a company converted to a venture enterprise in the last three years or less. The three-year threshold is proposed to be five years under the proposed change to the Article 13 of the Presidential Decree.

In addition, in order for angel investors to qualify for the tax benefits, certain conditions must be satisfied: the capital of an angel investor cannot be provided in a venture business which is the angel investor's related party; the angel investor cannot be a related party with any of shareholders in the venture, excluding minority shareholders holding less than 1% interest ('1% rule') nor the family of these shareholders.

Under a proposed amendment, the conditions for tax benefits will be relaxed for additional injections of capital in the venture:

- Additional capital may be injected in the period of three years from the date of the initial injection of capital;
- the total amount of investment cannot exceed KRW1 billion; and
- exception will be granted in applying the 1% rule.

Expanded scope of business start-ups for which investment is eligible for tax deduction

Angel investors may take a tax deduction on investments in a qualifying venture when they invest directly or via an individual investment association. Under a proposed change, the scope of qualifying ventures will expand to include a small and midsize company having the following attributes: i) a startup small and midsize company which has engaged in business for no more than three years (two years for a company in any of 16 specified knowledge-based service businesses); and ii) annual R&D investment amounts to at least KRW30 million (KRW20 million for knowledge-based service business). However, the deduction ranging from 30% to 100% of the investment amount from taxable income will remain unchanged. In addition, the deduction continues to be limited to 50% of the amount of the angel investor's taxable income.

These proposed changes will apply to capital injections made following the proclamation date of the amended Presidential Decree.

Tax deferral for capital gains from in-kind contribution of industrial property rights by individual

The recently amended Article 16-4 of the STTCL allows an individual investor to elect to pay tax on gains arising from the transfer of industrial property rights in an in-kind contribution to a venture enterprise upon the disposal of the shares acquired on the in-kind investment, rather than paying tax upon the in-kind contribution. The gains subject to tax refer to the difference between the transfer price of the acquired shares and the acquisition cost of industrial property rights.

Under the proposed Presidential Decree of the STTCL, the affected industrial property rights will include patent rights, utility model rights, design rights and the trademark rights as specified in the Decree. The proposed preferential tax treatment will apply to the individual resident excluding related parties to the venture enterprise (eg shareholders owning at least

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30% shares in the venture enterprise and their relatives, the person having economic relationship and management control relationship with the venture enterprise, the largest shareholder). To receive the preferential tax treatment, it is proposed that certain documents should be submitted, including the statement on shares distributed for the in-kind contribution of qualifying industrial property rights, the list of those which the special tax treatment are applicable and details of accounts exclusively used for in-kind investment purposes.

Additional business eligible for SMC status and job-creating investment tax credit

Currently, tax benefits are enjoyed by qualifying small and midsize companies engaged in 51 lines of businesses as specified by the STTCL. Under the proposed Presidential Decree, the business of security system services will be added to the list of 51 lines of businesses. Also, for the purpose of tax credits for job-creating investment, restaurant business will be included in the list of eligible businesses (eg manufacturing, agricultural and fishery business, mining, publication).
The changes will be applicable for fiscal years starting January 1, 2016.

Exception to recapturing tax benefits and establishment of a pure holding company via a qualified divestiture

The law currently provides for the deferral of tax on capital gains derived from the contribution of shares to establish a holding company. However, taxes deferred will be recaptured if shares in the holding company received as the consideration for the contribution are disposed of. To help support the incorporation of holding companies, it is proposed that an exception in applying the rule of recapturing tax benefits will be granted to the case where shares a corporation holds in an existing holding company are transferred via a qualified divestiture to establish a pure holding company. The proposed tax benefit will apply to divestitures made on or after the date the amended law is proclaimed.

New tax benefits for individual savings accounts

Regulations of the STTCL have been amended to introduce a new investment arrangement qualifying for a favorable tax treatment, an individual savings account (ISA). Residents having wage and salary income or business income as well as agriculture or fishing farmers are eligible for making use of the new product for their investment. However, those who are subject to aggregate tax on income from financial assets will not be eligible.

The account will be exempt from income tax on the investment returns up to KRW2 million. The amount in excess of KRW2 million will be separately taxed at a 9% rate. For a wage and salary income earner whose annual compensation totals KRW50 million or less or global income is KRW35 million or less, the exemption threshold will be KRW2.5 million.

To qualify for the tax benefits, deposits shall be held in an ISA account for at least five years. The mandatory period will be three years for a wage and salary income earner whose annual compensation totals KRW50 million or less or global income is KRW35 million or less or young people who are from 15 years old to 29 years old. .

ISAs can include savings deposits, instalment savings, deposit money, funds, derivative-linked securities (e.g. equity-linked securities, ELS), securities and bonds with repurchase agreements and shares in real estate investment trusts (REIT) as defined in the REIT Act. No more than the annual limit of KRW 20 million can be deposited in the account. Those who wish to enjoy the tax benefit must subscribe to an ISA no later than December 31, 2018.

The proposed tax benefit will apply to ISAs subscribed for on or after the date the amended law is proclaimed.

Tighter criteria for qualifying expenditure for research and manpower development tax credit

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Companies are allowed to take tax credits with respect to expenditure on qualifying research and manpower development including labor costs. Before the amendment, the qualifying expenses included labor costs paid for dedicated research staff, research assistants and research administration staff. However, labor costs incurred for research administration staff will no longer be eligible for this tax credit.

The proposed revision will be effective from fiscal years starting Jan. 1, 2016.

Change in core technologies and strategic growth industries eligible for a R&D tax credit

Companies presently claim a tax credit in relation to qualifying R&D expenditure in relation to core technologies as authorized by government ministries as well as pre-designated strategic growth industries. Currently, a list of 116 categories of technologies are eligible for the R&D tax credit. Intelligent IoT (Internet of Things), wearable smart apparatus, flexible displays, smart healthcare, hyper plastic materials, smart vehicles, etc. will be added to the list of eligible technologies. However, three categories of technologies including alternative crude oil purifying fuel system will no longer be eligible for the tax credit.

The proposed revision will be effective from fiscal years starting Jan. 1, 2016.

Individual Income Tax

Clarification on the computation of the 183-day threshold for residency test

Effective in February 2015, the threshold to test residency has been lowered from one year to 183 days, which is consistent with the criteria adopted in the majority of OECD member countries including the US, UK and Germany. Under the 183-day rule, an individual is considered a Korean resident if the individual is present in Korea for at least 183 days during a current year or during two consecutive years. For the purpose of counting the 183-day threshold, the days of presence in a foreign country for temporary purposes such as travel or medical treatment shall be counted.

Under a proposed amendment to the Presidential Decree of the IITL, the law clearly addresses that days of presence in Korea for temporary purposes of travel or medical treatment shall not be counted in the 183-day threshold if it is supported by adequate evidences, which shall be specified in the subordinate rules of the Presidential Decree. The proposed rule will only apply to those who have Korean nationality and reside in foreign countries.

New taxation for ministers of religion

Under the proposed Presidential Decree of the IITL, ministers or practitioners for religious services will be subject to tax on income earned for their services from religious organizations, effective January 1, 2018. The scope of taxable income will be income earned by ministers or practitioners for religious services ('ministers, etc.') from religious organizations. The applicable religious organizations shall be non-profit organizations of religion established in accordance with Article 32 of the Civil Law and their subordinate associations.

However, the scope of non-taxable income includes tuition fees paid for trainings related to religious activities by ministers, etc., meal expenses (up to KRW100,000 a month), payment in the nature of

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cost reimbursement expenses such as travel, night duty, religious costume, etc. and the provision of housing owned or rented by religious organization free of charge or at lower price. In addition, a certain percentage (20%~80%) of the income of ministers, etc. which will vary for each taxable income bracket will be allowed as deduction from taxable income. The withholding tax and year-end settlement schemes will apply to ministers, etc. in the same manner as applicable to wage earners. Payment received by ministers, etc. at the termination of religious services will constitute retirement income.

Expanded scope of major shareholder subject to capital gains tax

Currently, when the ownership of a shareholder together with its related parties in a company listed on the Korea Stock Exchange or an unlisted company is 2% or more (4% for the stock listed on the KOSDAQ or KONEX) or the market capitalization of the stock held by a shareholder together with its related parties amounts to KRW5 billion or more (KRW4 billion for stock listed on the KOSDAQ or KRW1 billion for stock listed on the KONEX), the shareholder and its related parties are treated as major shareholders and shall be subject to capital gains taxation.

The thresholds in determining a major shareholder will change to: i) ownership of 1% or the market capitalization of KRW2.5 billion for a company listed on the Korea Stock Exchange or an unlisted company; ii) the ownership of 2% or the market capitalization of KRW2 billion for a company listed on the KOSDAQ. The threshold in determining a major shareholder for the stock listed on the KONEX will remain unchanged. The proposed changes will apply to share transfer made from April 1, 2016 and thereafter. However, the proposed changes for an unlisted company will be effective for share transfers made from January 1, 2017 and thereafter.

Further reduction in capital gains tax rate for derivatives

Capital gains tax will apply to income arising from derivative transactions such as KOSPI 200 futures and options and similar derivatives (as prescribed in the Article 159-2 of the Presidential Decree of the IITL) that are traded on or after January 1, 2016. While the basic rate of capital gains tax on derivatives is 20%, the recently revised Article 104 of the IITL has allowed a reduction in the tax rate up to 75% of the basic rate (previously, 50% of the basic rate) where it is necessary for the development of capital markets. Subsequently, it is proposed under the Presidential Decree that the basic tax rate can be lowered to 5% (currently, 10%), which is aimed to help cope with developments in the derivative markets in a more flexible manner.

New withholding obligation on domestic company having foreign secondee

Currently, a foreign secondee working in Korea who receives employment income from a foreign corporation outside Korea is not subject to payroll withholding tax on such Korean sourced employment income, but can voluntarily join a taxpayers' association to pay monthly payroll withholding tax via the association to enjoy a 10% tax credit. The recently amended IITL requires a domestic company using foreign secondees to withhold payroll income tax at 17% when the domestic company pays service fees to the foreign corporation which has dispatched the foreign secondees.

The proposed Presidential Decree includes details on the applicable scope and procedures as delegated by the amended IITL. The domestic company having foreign secondees will be subject to the withholding obligation when making payments to the foreign corporation if all of the following conditions are met:

- The total amount of the service fees paid to a foreign corporation (or multiple foreign corporations involved) in return for services by the foreign corporation via foreign secondees exceeds KRW3 billion per year;
- The sales revenue of the domestic company making such service fee payment exceed

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KRW150 billion or the total assets exceed KRW500 billion during the preceding fiscal year; and

- The domestic company engages in air transportation, construction business, and professional, scientific and technical service business.

Affected foreign secondees will be the employees of a foreign corporation without a Korean permanent establishment, who provide services to a domestic company.

The domestic company subject to the withholding obligations must file withholding tax returns with a tax office, together with the copy of the service agreement executed with the foreign corporation.

For the withholding tax withheld and paid by the domestic company, the foreign company dispatching foreign secondees will be allowed to claim a refund of any overpaid withholding tax via a year-end settlement of the payroll withholding tax by submitting a copy of the contract executed between the domestic company and the foreign secondees and documents to support the wages or salaries paid by the foreign company to the secondees. These procedures may be undertaken by the domestic company on behalf of the foreign company.

The proposed change will apply to payments made to a foreign company from July 1, 2016 and thereafter.

Value Added Tax (VAT) Law

Application of zero-rated VAT for professional service and business support services on a reciprocal basis

According to the VAT Law, zero-rated VAT is available on the supply of certain services by a taxpayer if they are provided to a Korean nonresident or foreign enterprise having no permanent establishment in Korea and the taxpayer earns foreign currency consideration for such supply. However, it is proposed that in case of professional services and business support services supplied to the Korean nonresident or foreign enterprise without having a PE in Korea, zero-rated VAT will apply only if the foreign country where the nonresident or foreign enterprise is established gives similar VAT treatment (including VAT exemption) on the supply of those services by a Korean resident (i.e. zero-rated VAT on a reciprocal basis). The VAT Law change is proposed to give equal VAT treatment between the domestic resident or company receiving professional services and business support services and a nonresident or foreign company receiving those services in light of the fact that those services in nature are actually consumed in Korea. Professional services include legal services (those rendered by lawyers, patent attorney, and judicial scrivener), accounting & tax services, advertising, market survey and management consulting services. Business support services include human resources outsourcing and activities of employment placement agencies, office support services, etc.

The proposed change will apply to the professional services and business support services supplied on or after July 1, 2016.

Import VAT duty deferred until the filing of VAT with the tax office

When goods are imported into Korea, the VAT law requires for a taxpayer to pay the import VAT and appropriate duties at the time of importation. Under a proposed amendment, the VAT law will offer the VAT and duties deferment scheme that would permit importers to defer the import VAT and duties until they are filed with tax offices of their jurisdiction. According to the proposed rules, the scheme will be offered if certain conditions are met:

- An importer shall be a small and midsize company as defined in the STTCL which should be primarily engaged in the manufacturing business;

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- The value of exports shall represent at least 30% the total value of supplies during the immediately preceding year; and
- An importer has been in operation for at least three consecutive years and must ensure that there are no records of failing to pay taxes on time for at least two years out of their operation period.

The proposed scheme will only be available with respect to imported raw materials and goods which should be directly used for the importer's business.

Importers will be required to file an application with customs offices to enjoy the scheme. If approved, the scheme will cover one year of the import VAT and duties due on imported goods.

The proposed scheme will be available for the VAT and duties on goods imported on or after July 1, 2016.

Law for Coordination of International Tax Affairs

New reporting requirement to examine cross-border transactions of multinationals

As addressed in the tax reform proposals announced last August, the recently amended Law for Coordination of International Tax Affairs (LCITA) includes a new requirement for multinationals in Korea to submit information on their cross-border transactions. The requirement is applicable to both Korean companies and foreign companies having permanent establishments (PE's) in Korea if their total assets or transactions exceed given thresholds. Under the requirement, companies will have to submit their master and local files of cross-border related party transactions together with the documentation on their international transactions currently required under the LCITA. The failure to comply with the reporting requirement will be subject to a penalty.
The following details regarding affected taxpayers, information to be included, method of submission, period for submission, etc. are set out by the bill to amend the Enforcement Decree of the LCITA.

Affected taxpayers
Korean corporations and foreign corporations having a PE in Korea that meet all of the following conditions:
- Annual gross sales of an individual entity exceed KRW100 billion; and
- International related party transactions exceed KRW50 billion per year.

Applicable party to submit information
Local file: Korean company and foreign company having a PE in Korea that should meet the given thresholds of gross sales and related party transactions. When submitting the local file, it is required to indicate a party to submit a master file.

Master file: Ultimate parent company. In the event that a foreign parent company is not present in Korea, a Korean subsidiary or PE of the foreign parent is required to receive the required file from the foreign parent and submit it.

Information to be contained
Local file: Information relating to each entity organization, business, transfer pricing information on significant related party transactions and financial status.

Master file: Information relating to group organization, business, intangible assets, financial transactions as well as financial and tax information.

How to submit
The required files must be submitted to the tax offices of taxpayers' jurisdictions. Files may be submitted electronically. Local files must be prepared in Korean, while master files must be prepared in Korean or English. When English master files are submitted, Korean translations of the files must be provided within one month of submitting the English files.
The required files must be filed with taxpayers' corporation tax returns (i.e. within three months after the end of the taxpayer's fiscal year). However, taxpayers are allowed to request an extension to the filing deadlines by up to one year if there is any of

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justifiable reasons to be specified by the Presidential Decree. This revision will be effective to required files for fiscal years starting on or after Jan. 1, 2016.

Penalty
For the failure to submit a part or all of the required files or the submission or fraudulent reports, taxpayers will be subject to fines of KRW30 million, far higher than the initially proposed KRW10 million.

Proposed Changes to Other Tax Laws

Procedures for issuing tax rulings in response to taxpayers' inquiries

In general, inquiries relating to interpretation of the tax laws filed with the Ministry of Strategy and Finance (MOSF) are transmitted to the National Tax Service (NTS) which should issue rulings in response to such inquires. There are exceptional cases where the MOSF directly deals with and issues rulings in response to taxpayers' inquires, as specified by the Enforcement Decree of the Basic National Tax Law. It is proposed such exception will be granted to inquiries into tax rulings on matters where a tax appeal for a decision by a court or the Tax Tribunal, etc. is now in process.

Clarification on reasons for the expansion of tax audit scope

To help advocate the taxpayers' rights, the expansion of a tax audit scope is restricted unless there are reasons as specified by the Presidential Decree including the case where a review of the years other than the target year is required. Currently, a tax audit scope may be expanded where a review of other years is required including the situation when there are suspected substantial transactions identified in the other years. In connection with this, only if there is specific evidence substantiating taxpayer's attempt to evade tax will a review will be extended to other years and thereby enable the expansion of a tax audit scope according to a proposed amendment to the Enforcement Decree of the BNTL.

Relaxed restrictions on the family business succession tax deduction for the business of growing of crops

The Inheritance and Gift Tax Law (IGTL) provides for a family business succession tax deduction for small and midsize companies as defined in Article 5 of the STTCL. Among these small and midsize companies, however, those which are engaged in certain businesses as specified in Article 15 of the Enforcement Decree of the IGTL cannot enjoy the business succession tax benefit, according to the IGTL. It is proposed to relax such restrictions and allow small and midsize companies engaged in the business of growing crops to enjoy the business succession tax benefit if all of the following conditions are met:

- It must be the business of growing crop seeds and nursery products; and
- The sum of the asset value of real properties (land and buildings, etc.) must consist of less than 50% of the total assets of a family business

It will be applicable to business successions taking place after the amended law is proclaimed.

Deemed gift taxation of profits earned by a controlling shareholder in a beneficiary company from a business opportunity provided by related parties

According to the IGTL, when a controlling shareholder (including related parties) owns 30% or more in the company (i.e., beneficiary company), a portion of income derived by the beneficiary company from certain transactions is deemed as a gift to the controlling shareholder in the beneficiary company subject to gift tax.

Where the controlling shareholder (including relatives) in a beneficiary company has provided a business opportunity to the beneficiary company as specified by the Presidential Decree (excluding small and midsize companies), in any of the prescribed means, profits generated from the business shall be

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deemed a gift to the controlling shareholder and be taxed accordingly.

Further details are addressed in a bill to amend the Enforcement Decree of the IGTL.

- Related parties as specified by the Presidential Decree for this purpose include corporations (except small and midsize companies) having a special relationship with the controlling shareholder in a beneficiary company.

- Prescribed means include lease or rental, sales agency, franchise, standing offer agreements or other similar arrangements to be specified by the MOSF.

- Deemed gift on the controlling shareholder will be calculated as follows:
  (a beneficiary company's operational income from the provided business opportunity multiplied by the percentage ownership of the controlling shareholder, less the corporate income tax paid by the beneficiary company corresponding to the concerned income) x 3 years

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