



January 17, 2020

Legal Update

National Assembly Passes 2020 Corporate Tax Law Amendments

In late December 2019, the Korean National Assembly enacted the 2020 amendments to existing tax laws, including the Corporate Income Tax Law (“Corporate Tax Act”).

Unless otherwise specified, most of the changes have or will become effective on or after January 1, 2020.

On January 6, 2020, following the amendment of the tax laws, the Ministry of Economy & Finance (the “MOEF”) announced the government’s bill to amend the Presidential Decrees to the revised tax laws, and invited public comments on the amendments until January 28, 2020. Presidential decrees provide more detailed guidance on the laws.

Should the bill be finalized in the cabinet meeting, we expect the amended Presidential Decrees to be enacted in February 2020.

Below please find a summary of the key changes.

Major Revisions:

1. New special rule under the Corporate Tax Act – expanded scope of deductible bad debts for Small and Medium-sized Enterprises (“SMEs”)¹

- Currently, Article 19-2(1) of the Corporate Tax Act strictly restricts deduction for writing-off receivables to the prescribed cases, including but not limited to: (i) accounts receivable, accrued receivables, promissory notes, checks, etc., whose statute of limitations for a right to claim has lapsed; (ii) receivables that have been confirmed to be uncollectible due to bankruptcy of the debtor; and (iii) promissory notes dishonored at least 6 months ago.

Under the proposed amendment to the Presidential Decree, a SME may claim a full tax deduction for a bad debt after 2 years from the transaction date (as an accounting adjustment, rather than a tax adjustment). The exception to this new rule is trade receivables or non-trade receivables arising from a transaction with a specially related person or party.

Significance: As such, a SME could claim a tax deduction for uncollectible receivables after 2 years from the transaction date (no particular reason is necessary). Further, there is no specific rule for the effective date in the addendum to Article 19-2(1), meaning that this rule could apply to the receivables that occurred prior to this amendment.

2. New special rule under the “Restriction of Special Taxation Act” for companies in the Materials, Parts and Equipment (“MPE”) sectors²

- Under the amendment to the “Restriction of Special Taxation Act,” a new article 13-3 (special rule for companies in the MPE sectors) has been added in the “Restriction of Special Taxation Act” to provide financial support for companies in the MPE sectors.

1. See Article 19-2(1), subparagraph 9-2 of the Proposed Amendment to the Enforcement Decree of the Corporate Tax Act.

2. See Article 13-3 of the Restriction of Special Taxation Act, and Article 12-3 of the Proposed Amendment to Enforcement Decree of the Restriction of the Special Taxation Act.

In summary, if two or more of domestic companies make share contributions to, or acquire shares in, a company in the MPE sectors to make a joint investment in human resources, research & development (“R&D”), and facilities on December 31, 2022 or earlier, then such corporate investors can claim a tax credit for 5% of the share capital.

Also, if a domestic company acquires a foreign company in the MPE sectors, then the domestic company is entitled to a tax credit for 5 % of the acquisition price (7% for a “middle-standing enterprise” or 10% for a small and medium enterprise).

3. New rule under the “Restriction of the Special Taxation Act” – imposes restriction on tax deferral benefits for establishing or converting to a holding company³

- Under Article 38-2 of the “Restriction of the Special Taxation Act,” a domestic tax resident can defer capital gains tax or corporate income tax arising from an in-kind contribution to a holding company until the domestic shareholder sells the shares acquired through the in-kind contribution; however, the shareholder must establish a holding company or converts a domestic company to a holding company through the in-kind contribution that qualifies for such tax deferral by December 31, 2021.

Under the tax amendment, the time limit for application of this rule will be extended to December 31, 2024. Also, the tax deferral of capital gains tax or corporate income tax will be changed to the prescribed payment arrangement – i.e., paying the tax due in installments over 3 years after the initial 4-year deferment period.

Significance: Thus, it should be noted that the tax amendment can lead to taxation of an unrealized gain, so that potential restructuring or reorganization of a company under Article 38-2 could be negatively affected. However, as this rule applies to an in-kind contribution made by a domestic shareholder beginning January 1, 2022, anyone is eligible for the tax deferral as long as he or she makes the eligible in-kind contribution prior to January 1, 2022.

3. See Article 38-2 of the Restriction of Special Taxation Act.

Other Revisions:

4. Other tax amendments

- a. **Exclusion of a government subsidy (which has been offset by tax loss carryforward) from tax-exempt income** (Article 18, subparagraph 6 of the Corporate Tax Act)
 - Where a government subsidy is offset by tax loss carryforward, the subsidy will not be considered to be a tax-exempt gain from contribution of assets.
- b. **The wording of the shareholding percentage threshold for tax-exempt dividend income will be changed from “more than” to “at least”** (Article 18-2 and Article 18-3 of the Corporate Tax Act)
 - For instance, in case of 30% holding in a publicly listed company, the tax exemption percentage will be changed from 30% to 50%.
- c. **Increased tax deduction limit for entertainment expenses of a SME** (Article 25 (4) of the Corporate Tax Act)
 - Standard deduction will be increased from KRW 24 million to KRW 36 million.
 - Deductions based on revenue – the applicable percentage will be increased from 0.2% to 0.3% for a SME with annual revenue of KRW 10 billion or less. Further, the applicable percentage for a SME with annual revenue of more than KRW 10 billion will be increased from 0.1% to 0.2%.
- d. **Increased limit for an immediate tax deduction of minor repair and maintenance** (Article 31 (3) of the Proposed Amendment to the Enforcement Degree of the Corporate Tax Act)
 - The current limit of KRW 3 million will be increased to KRW 6 million.

- e. **Improvement on how to deduct a charitable contribution in excess of the tax deduction limit** (Article 24-6 of the Proposed Amendment to the Enforcement Decree of the Corporate Tax Act)
 - The prior year’s charitable contribution(s) in excess of the tax deduction limit will be deducted prior to the current year’s charitable contribution.

- f. **Increased limit for a tax deduction of motor vehicle expenses without a logbook** (Article 50-2 (7) of the Proposed Amendment to the Enforcement Decree of the Corporate Tax Act)
 - The current limit of KRW 10 million will be increased to KRW 15 million.

- g. **No change in the current tax rules despite the new K-IFRS lease standard** (Article 24 (5) of the Proposed Amendment to the Enforcement Decree of the Corporate Tax Act)
 - The current tax depreciation method will be maintained despite the new K-IFRS standard concerning accounting for leases.

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Our Tax practice is comprised of attorneys, CPAs, tax attorneys, and former high-ranking officials from the National Tax Service (“NTS”), National Tax Tribunal, Supreme Court of Korea, the Ministry of Economy & Finance (“MOEF”), Korea Customs Service, among others.

Should you have any questions or comments about the contents of this newsletter, or if we can be otherwise helpful, please do not hesitate to contact us.

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