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Legal Update

2020 Korean Tax Update – Spotlight on Value-Added Tax

In this final 2020 Korean Tax Update, we focus on the amended Korean tax laws relating to value-added tax (“VAT”).

1. Clarification on the definition of the VAT taxpayer concerning trust property¹

- Prior to these amendments: Where a trust property is sold under the name of the trustee, the settlor of the trust was generally regarded as the VAT taxpayer (i.e., the person who is responsible for paying the VAT payable²). Conversely, if the trustee supplies the trust property of a mortgage trust with a view to settling liabilities of the settlor, the trustee became responsible for paying the VAT payable arising from the supply.

1. Article 10(8) of the Value-Added Tax Act, and Article 21-2 of the Proposed Amendment to the Enforcement Decree of the Value-Added Tax Act.

2. Also called the output VAT.

- Under the amendments: In cases where a developer sells the trust property in the course of undertaking: (i) an urban redevelopment or housing reconstruction project; or (ii) a small-scale housing improvement or reconstruction project in accordance with Article 27-1 of the “Act on the Improvement of Urban Areas and Residential Environment” or Article 19-1 of the “Act on Special Cases Concerning Unoccupied House or Small-scale Housing Improvement”, the trustee is considered to be responsible for the VAT obligation. This is intended to enhance administrative efficiency for both the taxpayer and the tax authority.
- It should be noted that this tax amendment is particularly concerned with a supply of goods. In other words, there is no explicit rule in specifying which party – the supplier or the customer – should be regarded as the VAT taxpayer for a supply of services under the relevant VAT laws and regulations.

2. Clarification on the amount of non-creditable input VAT³

- Previously, where a supplier failed to include all or part of the prescribed items in an electronic tax invoice to a customer, the customer could not claim the input VAT credit in relation to the tax invoice. On this matter, the rule prior to this amendment was not clear about whether the customer cannot claim the whole VAT input amount or the difference in input VAT arising from the incorrect value of supply.
- Under this tax amendment, where the reported value of supply differs from the actual value, it is now clear that the customer cannot claim only the difference in the input VAT.

3. Other amended tax laws relating to VAT

a. Time limit for claiming an input VAT on uncollectible accounts receivable extended⁴

- The time limit for completion is extended from 5 years to 10 years

3. Article 39(1) of the Value-Added Tax Act.

4. Article 87(2) of the Proposed Amendment to the Enforcement Decree of the Value-Added Tax Act.

b. VAT penalty regime improved⁵

- **Penalty burden reduced for a business taxpayer with multiple places of business operations:** Where a business taxpayer issues an electronic invoice under the incorrect place of business, the penalty is decreased from 2% to 1%.
- **Imposing two types of penalty on the same contravention abolished:** Where the 2% penalty for issuing an electronic tax invoice with an overstated value of supply is imposed, the 1% penalty for issuing an incorrect electronic tax invoice is not applicable.

c. Application of the import VAT deferral regime broadened⁶

- Under this tax amendment, the application of the import VAT deferral regime is being extended to the case, where the taxpayer failed to make the payment within the due date, but paid the VAT due within 15 days after the due date.
- Also, under the amendment, the due date for making this application is extended to 3 months from the due date for filing the relevant VAT return. This was previously 1 month from the due date.

d. Surviving entity in the merger can issue or receive electronic tax invoice⁷

- Where a transaction occurs between the intended date of the merger and the date of merger registration in accordance with the relevant merger accounting practices, the surviving entity in the merger can issue or receive an electronic tax invoice.

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

5. Article 60 of the Value-Added Tax Act.

6. Article 91-2 of the Proposed Amendment to the Enforcement Decree of the Value-Added Tax Act.

7. Article 56 subparagraph 8 of the Proposed Amendment to the Enforcement Decree of the Value-Added Tax Act.

Questions/Comments?

Should you have any questions or comments about the contents of this newsletter, please do not hesitate to contact us.

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