

What's new in 2021 Korean tax laws?

In line with the “New Generation” issue for the first quarter issue of KORUM magazine for 2021, we wanted to brief you on the new tax laws for 2021 that have been approved by the National Assembly of Korea last December.

The Ministry of Strategy and Finance has been working on re-writing of tax laws so that it is easier to read and understand for taxpayers. So far, Value Added Tax Act, Individual Income Tax Act and the Corporate Income Tax Act has been re-written. This year, the International Tax Coordination Act and Collection of National Tax Act have been re-written. Also, the Liquor Tax Act, which included not only liquor tax rules but also liquor license related rules, was divided so that now there is the Liquor Tax Act which prescribes relevant tax rules regarding liquor and Liquor License Act, which governs regulatory licensing rules and regulations. In terms of the substantive changes, we wanted to highlight what we thought may be pertinent to foreign individuals and companies doing business in Korea as follows.

First, we wanted to point out some of the new tax laws that protect your rights as a taxpayer in Korea.

- **Tax audit notice and result notifications** have become more expansive to include additional information to taxpayers under audit. Specifically, in the audit notice, the tax authorities now need to disclose the tax year subject to audit. After the audit is completed, the tax authorities are now required to include specific information to explain the outcome, such as the relevant tax laws, specific facts and circumstances for the determination of tax base and tax amount and also the types and amounts of penalties to be imposed and the basis for such penalties.

- **The base date from which interest accrues on refund requests** has been changed so that the interest accrues from the date on which the tax was paid, instead of the date on which the taxpayer files refund request. This change aligns with the law that allows the interest to accrue on tax payable to the tax authorities from the date the tax was due.

- **Arbitration** under domestic tax law has been introduced within the realm of Mutual Agreement Procedure (MAP). This introduction will eventually be an additional tool to resolve international tax dispute when arbitration provision is also implemented into the tax treaties, and will actually speed up the re-negotiation of tax treaties to adopt this new way of resolving tax disputes.

- **Carryforward periods for tax credits** have been extended to 10 years from 5 to 7 years.

- **Carryforward periods for net operating losses** have also been extended to 15 years from 10 years.

Second, we wanted to highlight some of the other amendments that provide more flexibility for you in terms of filing deadlines for cross-border transactions.

- **A roll-back period for bi-lateral APAs** has been extended to 7 years from 5 years, and for unilateral APAs

5 years from 3 years. As a result, considering the cover period for an APA is 5 years, the total number of years that an APA is effective can be as long as 12 years for bi-lateral APAs and 10 years for unilateral APAs.

- Also, the **deadline for the APA annual report** previously was within 6 months after the due date of corporate income tax returns, but now has been extended by 3 months, thus within 12 months after the fiscal year.
- Additionally, the **Summary of International Transactions and Condensed Profit and Loss Statements or Related Parties and the Information on Overseas Real Estate and Investment** have all been extended by 3 months, thus within 6 months after the fiscal year.

- If the taxpayer files **master and local file**, then the taxpayer is automatically exempted from submitting the Summary of International Transactions and the Transfer Pricing Determination Methodology.

- In the past, if there had been a final decision rendered by a domestic or foreign court, **Mutual Agreement Procedure (MAP)** could not be commenced. Under the new tax amendment, the final court decision does not necessitate closing of a MAP proceeding any longer, but a MAP may commence in order to enforce corresponding adjustments, if such corresponding adjustment is necessary as a result of the court decision.

Last, but not least, there are a few amendments worth noting for foreign individuals residing in Korea.

- Foreign individuals who work in Korea eligible for a flat income tax rate 19% for first 5 years working in Korea. This flat rate tax provision is to expire as of December 31, 2021 and many foreign individuals will be subject to gradual tax rates with the marginal rate of 45%, which is introduced this year to apply to income bracket exceeding KRW 1 billion.

- Gain from sale of **virtual assets** will be categorized as 'other income' and taxed at a rate of 20% with the exception of those that fall below the minimum threshold of KRW 2.5 million per year. The reporting and payments of such gains must be made annually in May. The payor of payments from the sale of virtual assets to foreign companies or non-resident individuals are required to withhold tax at 20% or a reduced rate under the relevant tax treaties. This change will become effective from January 1, 2022.

Sun Young (Sunny) Kim
Senior Foreign Attorney
SHIN & KIM LLC
www.shinkim.com

