



Taxation of Virtual Assets and NFTs

The taxation on the transfer of virtual assets, which was set to take effect in January 2023, has been postponed to January 2025.

The taxation of virtual assets may be broadly categorized into (i) gift tax levied on Korean residents, (ii) income tax levied on Korean resident individuals, (iii) withholding tax levied on non-resident individuals, (iv) withholding tax levied on foreign corporations, and (v) corporate tax levied on domestic corporations.

The aforementioned deferral of taxation pertains to the income tax levied on Korean resident individuals, the withholding tax levied on non-resident individuals, and the withholding tax levied on foreign corporations referred to above.

Gift Tax

Any gift of virtual assets may be subject to gift tax under current laws and regulations. The value of virtual assets traded on the four major exchanges in Korea is the average of the daily average prices published by each exchange for the period between one month prior to and

after such gift, which is available on the National Tax Service's Hometax website (www.hometax.go.kr). This gift tax may be levied within a 10-year period, which increases up to 15 years in the case of non-filing of a tax return or commitment of a fraudulent act.

Although there are mixed views on whether NFTs, or non-fungible tokens, constitute virtual assets, there is room for the interpretation that they are subject to gift tax as well, since they constitute 'tangible or intangible properties or gains.' Their value may be based on the market value as of the date of gift, which may be determined through considering similar transactions and their transfer prices within certain period of time, in accordance with the general principles of the Inheritance and Gift Tax Act.

Income Tax on Korean Resident Individuals

In Korea, income tax is only levied on taxable incomes listed in the Income Tax Act. Since the current Income Tax Act had no provision for taxing the transfer of virtual assets, it was amended on December 29, 2020, to make them taxable. The effective date of this amendment was initially

set for January 2022, which was deferred to January 2023, and again to January 2025. Therefore, income from the transfer of virtual assets by Korean resident individuals is not currently taxed and will be taxed from January 2025.

The income tax on the transfer of virtual assets is calculated by (a) reducing the transfer price (i.e., the money received for selling the relevant virtual asset) by (i) the acquisition price (i.e., money spent for purchasing the relevant virtual asset) and (ii) any other incidental expenses, including transaction fee, then (b) applying an annual standard deduction of KRW 2.5 million, and then (c) applying the relevant income tax rate. The determination of the transfer value may be simple, but that of the acquisition value may not. Therefore, there are many special regulations that will be in effect to resolve this issue.

As for NFTs, pursuant to the current draft of the tax law amendment, the taxation of NFTs may depend on whether they are considered virtual assets under the Act on Reporting and Using Specified Financial Transaction Information. At present, it is difficult to predict how NFTs will be used in the future, so we will need to continue to monitor the taxation of NFTs.

Withholding Tax on Non-resident Individuals and Foreign Corporations

Pursuant to the amendment of Income Tax Act and the Corporate Tax Act, the effective date of which has been delayed until January 2025, non-resident individuals and foreign corporations shall be subject to taxation not only when they transfer or exchange virtual assets, but also when they withdraw said virtual assets from an exchange.

One of the issues under the current tax laws is whether Korean exchanges shall be obligated to withhold tax on virtual assets being transferred before the aforementioned amendments take effect. On this issue, the tax authority takes the position that taxation is possible under the current laws, even before the tax law amendment effective as of January 2025, and there are ongoing disagreements on this

issue with taxpayers.

On a related note, a potentially contestable issue in the future may be the extent to which Korean exchanges are required to investigate beneficial owners of income when withholding tax, especially in connection with the application of non-taxation or tax exemption.

Corporate Tax on Korean Corporations

In Korea, pursuant to the Corporate Tax Act, even income that is not listed in the Corporate Tax Act may be taxable if such income increases the net worth of a corporation. In this respect, there will be no significant change caused by the amendment that will be effective as of January 2025.

Currently, corporations cannot be issued ‘real name accounts’ that is required for virtual asset trading. This has caused certain corporations to use another person’s account or engage in over-the-counter transactions. In the former case, corporations need to review the risk of the deposit of corporate funds to the individual’s account being taxed as a gift to the individual, as well as issues relating to ‘real name’ financial system. As for the latter case, corporations would need to review whether they shall be reported as a virtual asset service provider under the Act on Reporting and Using Specified Financial Transaction Information.



By Jinkyu Yoon
Partner, Tax Group
SHIN & KIM LLC
jkyoon@shinkim.com

** The opinions expressed in this article are the author’s own and do not reflect the views of KOTRA.*