Tax Law Amendments in 2013

Provided below is a summary of the major amendments to Korean tax laws promulgated on January 1, 2013 that are relevant to international tax.

1. Refinement of the Provisions concerning Overseas Financial Account Reporting

The International Tax Coordination Law of Korea amended on January 1, 2013 by Act No. 11606 (the "Amended ITCL") refines and strengthens provisions on failure to report or under-reporting of overseas financial accounts in order to prevent offshore tax evasion by Korean residents and domestic companies. The amended provisions concerning overseas financial account reporting will begin to apply to the overseas financial accounts that are held by the taxpayers in 2013 and are required to be reported in 2014 (from 1 to 30 June). For details, please refer to the following:

(1) Expansion of the Scope of Overseas Financial Accounts

Under the International Tax Coordination Law of Korea effective as of 2012 (the "previous ITCL"), Korean residents and domestic companies were required to report their cash and securities accounts opened in foreign countries. However, the Amended ITCL expands the list of overseas financial accounts to include accounts opened with overseas financial institutions for all types of financial assets such as cash, securities and derivatives.

(2) Introduction of Penalty for Failure to Report Overseas Financial Account

Under the previous ITCL, if Korean residents and domestic companies required to report their overseas financial account fail to report or under-report the value of such account, they are subject to a fine of up to 10% of the non-reported or under-reported value of such account. However, under the Amended ITCL, if the non-reported or under-reported amount exceeds KRW 5 billion, the residents and companies in violation of the reporting requirement can be subject to imprisonment for up to two (2) years or a fine of up to 10% of the amount in violation. If punished under the amended provisions, they will not be subject to the above 10% penalty.

(3) Change of Method to Calculate Account Balance

Under the previous ITCL, if Korean residents and domestic companies have financial accounts opened with overseas financial institutions and the total value of such accounts exceeds KRW 1 billion in any single day during any given year, they are required to report the highest deposit balance of such accounts. However, according to the Amended ITCL, the reporting obligation will be triggered depending on the aggregate deposit balance at each month end, i.e., the sum of each overseas financial account's deposit balance at the end of any month exceeds KRW 1 billion, the Korean residents and domestic companies are required to file a report on their overseas financial accounts with respect to the year in which such excess occurs.

2. Special Rule for Passive Foreign Partners of PEF

Under the Special Tax Treatment Control Law of Korea effective as of 2012 (the "previous STTCL"), income allocated from domestic private equity funds ("PEF") to non-residents and foreign companies who are passive foreign partners of the PEF was classified as dividends and taxed as such. However, under the Special Tax Treatment Control Law amended on January 1, 2013 by Act No. 11614 (the "Amended STTCL"), if a passive foreign partner of PEF is a pension fund or certain other type of entities incorporated in a country that has a tax treaty with Korea and is exempt from taxation in such country (the "Qualified Passive Partner"), then income allocated to the Qualified Passive Partner from the PEF will be classified depending on the source of such income (i.e., nature of the assets held by the PEF and transactions involving such assets) for Korean tax purpose and taxed as if the Qualified Passive Partner directly owns part of the assets held by the PEF. Therefore, income allocated to the Qualified Passive Partner out of capital gains earned by the PEF from a transfer of securities may not be taxable in Korea if relevant tax treaty between Korea and the country in which the Qualified Passive Partner resides exempts the Qualified Passive Partner from Korean taxation on such capital gains.

The amended provisions are applicable from the fiscal year beginning on or after January 1, 2013.

3. Tax Benefits for Certain Foreign-Currency Denominated Long-Term Time Deposits held by Non-residents

In an effort to promote a long-term and stable supply of foreign currency, interest payments on foreign currency denominated long-term time deposits of nonresidents or foreign companies (excluding their permanent establishments in Korea) will be exempt from income tax or corporate tax, provided that the maturity of the time deposit is one (1) year or longer. This exemption will remain available for deposits opened on or before and will sunset on December 31, 2015.

The amended provisions are applicable to qualifying deposits opened on or after January 1, 2013.

4. Extension and Amendment of Special Income Tax Rates for Foreign Employees

The Amended STTCL extends the sunset date of the current special tax rate for foreign employees for another two (2) years until December 31, 2014. However, the current flat rate of 15% will be increased to 17%.

The amended provisions are applicable to income arising in a fiscal year beginning on or after January 1, 2013.

If there is any question regarding the above, please contact us as set out below.

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