

## Proposed Tax Law Amendments in 2015 – International Taxation

We summarize below the major amendments to Korean tax laws contained in the proposed draft announced by the Ministry of Strategy and Finance of Korea on August 6, 2015, which are relevant to international taxation.

### 1. Bigger percentage given to employment in calculating the ceiling on tax exemption or reduction for foreign-invested companies

In order to induce foreign-invested companies to create more jobs, the proposed amendments to the Special Tax Treatment Control Law (“STTCL”) will give a bigger percentage to employment in calculating the ceiling on exemption or reduction of income tax and corporate tax for foreign-invested companies. Major details of such amendments are as follows (Article 121-2(14) of the STTCL).

Current	Proposed Amendments
<p>■ Ceiling on exemption / reduction of income tax and corporate tax for foreign-invested companies: ① + ② below</p> <p>① Based on amount:</p> <ul style="list-style-type: none"> <li>- Seven-year type : foreign investment amount X 70%</li> <li>- Five-year type : foreign investment amount X 50%</li> </ul> <p>② Based on employment</p> <ul style="list-style-type: none"> <li>- The sum of the following amounts (provided that it shall not exceed 20% of the foreign investment amount):               <ul style="list-style-type: none"> <li>(i) For graduates of meister high schools, specialized vocational high schools, etc. : KRW 20 million per person;</li> <li>(ii) For young workers, handicapped persons, worked aged 60 or older : KRW 15 million per person; and</li> <li>(iii) Others : KRW 10 million per person.</li> </ul> </li> </ul>	<p>■ Bigger percentage given to employment in calculating the ceiling on exemption or reduction of income tax and corporate tax</p> <p>① Based on amount:</p> <ul style="list-style-type: none"> <li>- Seven-year type : foreign investment amount X 50%</li> <li>- Five-year type : foreign investment amount X 40%</li> </ul> <p>② Based on employment</p> <ul style="list-style-type: none"> <li>- The sum of the following amounts (provided that it shall not exceed 40% (for seven-year type) of the foreign investment amount or 30% (for five-year type) of the foreign investment amount) : Same as in the left column</li> </ul>

The proposed amendments above will apply with respect to capital contributions made on or after January 1, 2016.

## **2. Change in the criteria for determination of shares of a domestic corporation with excessive real estate held by a non-resident or foreign corporation**

If a non-resident or foreign corporation holds shares of a domestic corporation with excessive real estate holdings (“Excessive Real Estate Corporation”), a transfer of shares of such Excessive Real Estate Corporation by such non-resident or foreign corporation is deemed to constitute a transfer of real estate for taxation purposes (“Deemed Real Estate Transfer”). To promote equitable taxation compared to residents and prohibit tax avoidance, the proposed amendments to the Income Tax Law and the Corporate Tax Law introduce a change in the criteria for determination of a transfer of shares of an Excessive Real Estate Corporation which constitutes a Deemed Real Estate Transfer. Under the proposed amendments to the Income Tax Law and the Corporate Tax Law, in determining whether real estate accounts for 50% of the total assets of the domestic corporation that issued the subject shares, the value of the shares of another Excessive Real Estate Corporation held by such domestic corporation (amount corresponding to such real estate holding ratio) will be included. (subparagraph 9 of Article 119 of the Income Tax Law and subparagraph 7 of Article 93 of the Corporate Tax Law)

Real Estate Ratio = (value of the real estate of such corporation + value of the shares of another Excessive Real Estate Corporation held by such corporation X real estate of such other Excessive Real Estate Corporation /total assets of such other Excessive Real Estate Corporation) / total assets of such corporation

The above proposed amendments will apply with respect to transfers made on or after January 1, 2016.

## **3. Insertion of the obligation to submit an integrated international transaction report for multinational companies**

In order to prevent tax avoidance through manipulation of traded prices between affiliates of a multinational company, the proposed amendments to the International Tax Coordination Law (the “ITCL”) require the submission of an integrated international transaction report in addition to a specification of international transactions. Major details of the proposed amendments are as follows (Articles 11(1) and 12(1) of the ITCL, and Article 19(1) of the Enforcement Decree of the ITCL).

	Proposed Amendments
Applicable to :	<ul style="list-style-type: none"> <li>Domestic corporations with at least a certain size of transactions and assets(*) and foreign corporations with a domestic place of business</li> </ul> (*) Specific requirements shall be set forth in the Enforcement Decree of the ITCL
Documents required to be submitted :	<ul style="list-style-type: none"> <li>An integrated international transaction report (showing management information of the multinational company in question and the status of transfer price related transactions)</li> </ul>
Due date for submission :	<ul style="list-style-type: none"> <li>Same as the due date for filing a corporate income tax return</li> </ul>
Consequence of failure to submit :	<ul style="list-style-type: none"> <li>Imposition of a fine for negligence up to KRW 10 million</li> </ul>

The proposed amendments above will apply with respect to fiscal year commencing on or after January 1, 2016.

#### 4. Withholding obligation newly imposed on domestic corporations to which high-income employees are seconded by foreign corporations

Under the proposed amendments to the Income Tax Law, a domestic corporation to which a high-income employee is seconded shall have the withholding obligation, in order to more stringently manage labor income earned by employees seconded to domestic corporations. Major details of the proposed amendments are as follows (Article 156-7 newly inserted in the Income Tax Law) :

	Proposed Amendments
General seconded employees :	<ul style="list-style-type: none"> <li>To file a tax return for, and pay, the tax directly or through the tax association, without having the income tax withheld (same as currently)</li> </ul>
High-income seconded employees :	<ul style="list-style-type: none"> <li>When a domestic corporation to which employees are seconded by a foreign corporation pays, to such foreign corporation, the consideration for the services provided by such seconded employees, such domestic corporation shall withhold the relevant tax (the persons subject to such withholding tax, and the requirements, procedures, etc. for such withholding, shall be set forth in the Enforcement Decree of the Income Tax Law) :</li> <li>Amount subject to withholding: Consideration for the services provided by the seconded employees (or the labor income portion of such consideration, if such labor income is identified)</li> <li>Withholding tax rate: 17% (special tax rate for foreign workers)</li> <li>Year-end adjustment: The foreign corporation that seconded workers to the domestic corporation shall make an application for tax refund to the head of the relevant district tax office.</li> </ul>

The proposed amendments above will apply with respect to fiscal year commencing on or after January 1, 2016.

If you have any questions regarding the above, please contact the authors below.

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