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*This publication contains information on selected current developments in Korean taxation, laws and regulations compiled by the tax service group of Samil PricewaterhouseCoopers, a network firm of PricewaterhouseCoopers.*

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## Opportunity to Apply for Early Payment of Tax Assessment Amount

The National Tax Service (NTS) has implemented a new rule to cut the final assessment process to lessen taxpayers' burdens in respect of the interest penalty, if requested.

According to the NTS, only 4% of taxpayers filed pre-assessment protests in 2006, while 96% agreed with the pre-assessment.

Nevertheless, under the old rule, interest penalty on the final assessment amount, whether a protest was made or not, would have been calculated from the date of filing due date to the end of the pre-assessment protest period at 10.95% per annum.

Effective April 2, 2007, taxpayers may elect to pay taxes without having to wait for the pre-assessment protest period of 30 days, thereby lessening the interest penalty that is otherwise imposed during the period.

To receive the benefits, taxpayers are required to file an application for early payment of tax assessment amount with the relevant district tax office that issued the pre-assessment notice.

Taxpayers may still file a protest against the final assessment through tax appeal procedures even if a request for early payment is made.

## Korean Customs Service Is Considering the Advance Customs Valuation Agreement System

The Korean Customs Service (KCS) is considering introducing the advance customs valuation agreement (ACVA) to reduce customs-related uncertainties. The KCS will amend the Customs Act to include details on the ACVA during the first half of 2007 for implementation expected by the end of the year. The KCS' plans to introduce the ACVA were revealed during a seminar held in Korea in April for foreign-invested companies regarding the government's plan to introduce ACVA.

The proposed ACVA is an agreement between a taxpayer and the KCS on the appropriate dutiable value of imported goods such as those traded between related parties.

According to the KCS, the proposed ACVA will adopt the same basis for valuation of transactions as that in the existing rules for advance pricing agreement (APA) for an appropriate transfer pricing methodology. This will help alleviate valuation inconsistency between the KCS' customs valuation and the NTS' transfer pricing valuation.

The KCS anticipates that the proposed ACVA will make it possible for foreign-invested companies in Korea to reduce customs-related uncertainties by avoiding possible disputes with the KCS or possible post audits on dutiable value of goods imported from related parties.

### **Domestic Fund Distributions in respect of Foreign Stock Investment Will Not Be Temporarily Taxed**

Individual investors who are Korean residents will not be subject to Korean income tax on distributions from domestic funds or asset management companies, which are related to capital gains from shares listed on foreign stock market. Presently, the related tax exemption is only available on capital gains derived from disposition of investment in shares traded on the Korean stock market or issued by Korean venture firms.

The proposed bill was passed by the Korean National Assembly on April 30, 2007. The tax exemption will be granted for three years from the date the revised rules are promulgated.

## **Rulings**

### **Indirect Foreign Tax Credit for Dividends Paid by a Chinese Subsidiary of a Domestic Company**

Indirect foreign tax credits may be obtained for dividends received by a domestic company from its subsidiary in China. The tax credit will be made available in fiscal years beginning on or after January 1, 2007, in accordance with the second protocol to the 1994 tax treaty between Korea and China which became effective on July 4, 2006 (*Seomyon2team-393*, 2007.3.12).

The second protocol provides for indirect foreign tax credit for dividends paid by a Chinese subsidiary to a Korean shareholder owning not less than 10% of the shares in the paying company. Before the second protocol became effective, the Korea/China tax treaty only allowed direct foreign tax credit.

### **Whether to Apply the Denial of Unfair Transaction Rule for Share Transfers**

The rule for denial of unfair transaction between related parties under the Corporate Income Tax Law (CTL) shall not apply in a share transfer between two unrelated shareholders of a same Korean target company (*Seomyon2team-454*, 2007.3.19).

Where a Japanese company having 97% share equity in a domestic company X transfers its equity to a domestic company Y, also an existing shareholder of X with 3% share ownership, at a value lower than the arm's length price.

The ruling provides that the parties to the share transactions cannot be viewed as related parties solely on the basis that they are shareholders of the same company. The rule for denial of unfair transaction shall therefore not apply in this case.

The ruling further elaborates that the payment received by the Japanese company without

having a permanent establishment in Korea in exchange for the transferred shares shall be Korean source income, subject to Korean withholding taxes in accordance with Article 13 of the Korea-Japan income tax treaty (*i.e.*, *Gains derived from the alienation of shares*) and Article 93 of the CTL (*i.e.*, *Korean source income of foreign corporation*). Therefore, the domestic company Y must withhold the relevant taxes upon payment.

### **Ruling in Keeping with the Substance over Form Rule**

Consistent with the substance over form rule, an offshore investor (*i.e.*, beneficial owner) residing in a non-tax treaty jurisdiction shall be subject to dividend withholding tax in Korea at the CTL rate (rather than the reduced treaty rates) even if it receives dividends from its Korean investment via its foreign subsidiary located in a tax treaty jurisdiction, according to a press release by the NTS issued in April 2007.

An offshore company based in Country X received dividends from a domestic company in which it had 75% equity stake. The domestic company withheld taxes on dividends at the time of payment to the offshore company at the reduced tax rate as stated in the income tax treaty entered into between Korea and Country X.

The Korean tax authorities determined that the offshore company situated in Country X was not the beneficial owner of the dividends on the basis that the company did not have any employees nor paid any salary to its appointed director. The beneficial owner was determined to be another offshore company situated in a third country that does not maintain an income tax treaty with Korea. Thus, the dividends received by the offshore company were taxed at the 27.5% withholding rate (including resident surtax) under the CTL.

The information contained in this publication is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. For more information, please contact your usual Samil PwC client service team or professionals listed below.

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## SamilPwCAcademy Programs

### 2007년 5월의 교육프로그램

#### 원천징수실무 5월 8일 (화) ~ 5월 11일 (금), 4일간 총 24시간

법인세 및 소득세법의 기본개념을 실무적인 관점에서 해설, 원천징수 실제사례의 업무 프로세스별 해설, 소득종류별 원천징수방법의 사례위주 설명등

#### 재무회계전문 5월 14일 (월) ~ 5월 18일 (금), 5일간 총 31시간

파생상품의 이해 및 회계, 지분법 및 연결회계, 합병 및 분할 회계와 세무, 국제회계기준 해설

#### 부가가치세실무 5월 14일 (월) ~ 5월 18일 (금), 5일간 총 31시간

부가가치세 전반에 걸친 사례중심별 해설, 쟁점별 최신 예규, 국세 심판례, 대법원 판례 등 실무대책 해설, 세무조사에 대비한 부가가치세와 법인세 설명

#### 기업회계실무 5월 15일 (화) ~ 5월 18일 (금), 4일간 총 24시간

기업회계기준 및 기업회계기준서의 계정과목별 해설, 기업회계기준관련 해석적용 및 질의회신 사례해설, 재무회계 핵심 논점에 관한 실무중심 해설

#### 재무제표분석실무 5월 15일 (화) ~ 5월 18일 (금), 4일간 총 24시간

계정분석을 통한 재무제표분석, 재무비율분석, 재무제표와 현금흐름분석 재무제표와 원가구조분석, 재무제표를 통한 부실징후분석

#### 재무제표 쉽게 읽는 법 5월 21일 (월) ~ 2007년 5월 23일 (수), 3일간 총 17시간

재무제표의 종류 및 재무제표가 제공하는 정보에 대한 이해, 재무제표의 분석 및 활용을 위한 핵심 Check Points, 회계원리 및 재무제표에 대한 입체적인 이해 등

#### 원가 및 관리회계입문 5월 21일 (월) ~ 5월 23일 (수), 3일간 총 21시간

원가 및 관리회계에 대한 기본이론, 관리회계정보를 활용한 의사결정 및 성과평가방법 사례

#### 개정 재무제표 작성기준과 자본변동표(기업회계기준서 21호를 중심으로) 5월 23일 (화) ~ 5월 23일 (화), 1일간 총 4시간

기존 재무제표 작성기준과 개정 재무제표 작성기준의 주요 차이, 사례를 통한 재무제표 작성 실습

#### XBRL 입문과정 5월 22일 (화) ~ 5월 22일 (화), 1일간 총 4시간

XBRL 소개 및 관련 동향, XBRL을 통한 기업보고, XBRL 도입사례, Taxonomy만들기

#### 부동산관련 세무해설 및 절세전략 5월 29일 (수) ~ 5월 31일 (금), 3일간 총 21시간

골프장의 취득, 보유, 운영 및 양도에 관한 조세연구, 부동산관련 세무처리에 대한 법령 이해 및 절세방안 연구, 부동산시장의 흐름 파악 및 사례분석

위의 교육과정은 이론 및 실무, 그리고 사례 연구 등 실무능력향상에 중점을 둔 교육으로 「고용보협법 및 근로자 직업훈련촉진법」에 의해 교육훈련비의 일부를 정부로부터 지원 받는 교육과정으로 지정되어 있으며 (일부 과정은 제외) 교육 7일 전까지 신청하셔야 교육훈련비의 일부를 지원 받으실 수 있습니다. 자세한 사항에 대한 문의는 ☎: 02-3781-3429로 하시기 바랍니다.