



January 11, 2008

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.

Changes to Korean Tax Laws for 2008

The National Assembly approved amendments to the Corporate Income Tax Law and other tax laws, most of which have become effective from January 1, 2008.

The amended tax laws offer new tax credits to promote the development of logistics outsourcing and overseas natural resources exploration businesses. They also outline the partnership taxation which is to be enforced beginning in January, 2009.

This newsletter only focuses on amendments to tax laws. Amendments to enforcement decrees of the tax laws, which are yet to be approved, will be covered in the next issue.

Tax Credit for Logistics Outsourcing Cost

The amended Special Tax Treatment Control Law (STTCL) offers a new tax credit for a manufacturing company outsourcing logistics to an unrelated external service provider. The credit amount will be calculated at 3% of the increment logistics cost over the preceding year, which shall not exceed 10% of the company's corporate income tax for the concerned year.

The temporary tax credit will be made available on an application basis until the tax years which end on or before December 31, 2010.

Tax Credit for Overseas Natural Resources Exploration

A 3% tax credit will be granted for any of the following investments to be made in overseas natural resources exploration projects no later than December 31, 2010:

- Investment to acquire the mining or exploration right
- Capital contribution to a foreign corporation intended to acquire the mining or exploration right as prescribed in the Presidential Decree
- Direct overseas investment in a foreign subsidiary to acquire the mining or exploration right

If investment and capital contribution is transferred or withdrawn within five years from the date the investment or contribution, income tax equaling the amount credited plus a certain interest must be paid in the tax year in which the transfer or withdrawal date falls.

Partnership Taxation

The amended STTCL provides 13 new clauses (Articles 100-14 through 100-26) outlining the partnership taxation which include few changes from the proposed partnership taxation rules revealed by the Ministry of Finance & Economy in September 2007 (*Please see the Samil Commentary, October 9, 2007 issue*).

Deferral of Capital Gains Tax for Certain Factory Relocation

A change is made to provide a tax incentive to a corporation which is forced to relocate its factory for the sake of the implementation of public projects. If a factory has been operated in a public project site for at least two years from the date of notifying the project approval and the factory relocation is made to one of pre-designated areas no later than December 31, 2009, gains on the sale of factory site and buildings may be included in the corporation's taxable income in equal installment for three years from the third taxable year after the sales.

New Tax Credit Method for R&D Expenditures

Large corporations will be able to elect a new method or the existing method in computing the amount of tax credit for research and development (R&D) expenditure if the proportion of R&D expenditures to gross sales equals or exceeds the comparable ratio of the immediately preceding year.

The method will allow a large corporation to deduct $3\% + \alpha$ (50% of the proportion of R&D expenditures to gross sales for the concerned tax year) of R&D expenditures from its taxable income for the year, which shall not exceed 6% of R&D expenditures.

The existing tax credit for R&D expenditures is limited to 40% ~50% of an increment in such expenditures for the concerned tax year from the average amount of the expenditure for the four preceding years.

Filing and Paying Tax on Gain from Share Transfer by a Foreign Corporation

A new provision prescribes the filing and payment of corporate income tax in case of the transfer of securities in a domestic corporation by a foreign corporation. If both the seller and the purchaser of Korean shares are foreign corporations without having a permanent establishment (PE) in Korea, the new provision requires the seller to file and pay the corporate income tax on the gain from the sales of Korean shares. It should be noted the new provision shall not be applicable if the purchaser withholds and pays the tax on the capital gains. Previously, the purchaser was subject to the withholding obligation in such a share transfer.

Reduction in Dividend Received Deduction

Dividend received deduction (DRD) is reduced in a prescribed manner in the Corporate Income Tax Law (CTL) if the distributing corporation invests in an affiliate. The DRD reduction applies only if the distribution corporation, the corporation receiving the dividend and the invested company are affiliated companies in a holding company group.

Changes to Thin Capitalization Rules

Two changes have been made to the thin capitalization rules under the amended Law for Coordination of International Tax Affairs (LCITA). One of the changes calls for subjecting the financial services industry to a 3:1 debt to equity ratio rather than 6:1 in enforcing the thin capitalization rule. Another change involves the method for calculating an amount disallowed from tax deduction in case there was a change in capital during the tax year due to a merger, de-merger, capital increase or reduction.

Exceptions to Deemed Dividend Rule

Where the consideration received by a shareholder upon liquidation exceeds the acquisition cost of the concerned shares, the excess is deemed to be a dividend paid by the company to the shareholder, subject to income tax.

According to the amendment, exceptions to the deemed dividend rule will be granted in the case of the reorganization pursuant to the Commercial Code, the transformation of a special company into a company in the Commercial Code as a result of the amendment or elimination of a special company-governing law and other reorganization as specified in the Presidential Decree.

Substance over Form Principle Rule for Domestic Transactions

Regulations of the Basic National Tax Act (BNTA) are amended to extend the economic substance test to domestic transactions, in addition to cross-border transactions tested pursuant to the LCITA. According to the amended rule, any transaction that a company makes through a third party, "routed transaction" or "step transaction" in an attempt to unreasonably reduce tax burden would be viewed as a tax-avoidance practice and be treated as a direct transaction or interdependent transactions based on its economic substance.

Request for Reassessment

The amended BNTA rephrases the existing provision to explicitly provide statutory limitations on requests for reassessment in certain cases. Generally, a taxpayer who has filed a tax return by a due date may file a request for reassessment within three years from the filing due date if the tax base or taxable income filed exceeds the amount which should have been filed pursuant to the tax law; or if deficits or tax refund fall short of the amount which should have been filed pursuant to the tax law.

When there is a tax assessment made by the tax office, the tax payer can file an appeal within 90 days from the date he or she learns of such assessment. The new law makes it clear that if this 90-day period for initiating an appeal procedure lapses, the tax payer cannot request for a reassessment, either, although the statute of limitation for such reassessment request is 3 years.

Scope of Controlling Shareholder

The scope of controlling shareholder will include an individual or a company that owns more than 50% of outstanding shares of a corporation from the existing threshold of 51% or more. Acquiring

more than 50% of equity share in a corporation is deemed to have acquired fixed assets of the corporations such as real property, vehicles, etc., for local tax purposes and accordingly is subject to acquisition tax.

Penalty on the Receipt of Fictitious Tax Invoice

A 2% penalty will be imposed on the receipt of fictitious tax invoices as is imposed on the issuance of such tax invoices.

Advance Customs Valuation Arrangement

Under the amended Customs Act, the existing prior examination of dutiable value is replaced with Advance Customs Valuation Arrangement (ACVA). According to the amended rule, taxpayers may request for the Customs Service to examine their customs valuation method for goods traded between related parties before filing its dutiable value return. The Customs Service must notify the examination results to the taxpayer in a period to be prescribed in the Presidential Decree.

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

2008 년 1 월/2 월의 교육프로그램

신입사위경리실무 1.14 (월) ~ 1.18 (금), 총 5일 (35시간)

회계보드게임을 통한 경영활동의 입체적인 이해와 재무제표의 연관성에 대한 종합적 학습, 계정과목별 회계처리 및 결산서 작성, 원가·관리회계 및 세무회계에 대한 기본개념

법인세 세무조정실무 1.14 (월) ~ 1.18 (금) 총 4 일 (24시간)

결산 및 세무조정 시 유의사항 등의 비교·설명, 세무조정계산서 작성실습, 세무조정계산서 사례집을 교재로 활용한 실무중심 학습

M&A 실무 1.15 (화) ~ 1.17 (목), 총 3일 (21시간)

M&A 개요, 기업가치평가, 자금조달, 특수한 형태의 M&A, M&A 회계 및 세무 쟁점

소비성경비지출 증빙에 따른 세무회계처리 1.17 (목) 총 1 일 (7시간)

접대비 개념, 판례와 해석상 접대비로 본 주요 사례, 50만원 이상 접대비 업무관련성 입증, 신용카드 매출전표와 매입세액 공제 등

기업법무실무 1.22 (화) ~ 1.24 (목), 총 3일 (21시간)

계약체결 및 관리실무, 민사소송실무, 강제집행, 지적재산권과 라이선싱,

자금관리 실무 2.12 (화) ~ 2.15 (금) 총 4 일 (28시간)

종합적인 자금관리를 위한 조달 및 운용, Project financing, 직,간접금융시장을 통한 자금조달 자산유동화증권(ABS)을 이용한 자금조달, 금리 및 환위험 관리전략 등

재무제표 분석실무 2.12 (화) ~ 2.15 (금), 총 4일 (24시간)

계정분석을 통한 재무제표 분석, 재무비율 분석, 재무제표와 현금흐름 분석, 원가구조분석, 부실 징후 분석

재무회계입문 2.13 (수) ~ 2.15 (금), 총 3일 (21시간)

경영시뮬레이션 게임을 통한 회계 흐름에 대한 입체적인 이해, 복식부기 원리 해설 및 사례, 전표작성, 경산 및 재무제표 작성 원리, 재무제표에서 일반적으로 사용되는 계정과목 해설

위의 교육과정은 이론 및 실무, 그리고 사례 연구 등 실무능력향상에 중점을 둔 교육으로 「고용보험법 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.