



Samil Commentary

Korean Tax Update

May 11, 2009

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.

Latest Update on Tax Law Changes

- Requirements for Deductible Stock Option Expense

Under the revised rules which became effective in February 2009, costs arising from the Korean subsidiary employees' exercise of the stock options granted by a listed foreign parent company will be allowed as a deductible expense for the Koreans subsidiary's corporate income tax purposes if such costs are charged back to Korea. Effective March 30, 2009, the latest amendment sets forth the requirements for a deductible stock option expense as follows:

- A foreign parent company must be listed on the Korean stock exchange or a foreign stock exchange and owns directly or indirectly at least 90% of the Korean subsidiary's voting shares;
- Stock options granted to the Korean subsidiary's employees must not exceed 10% of the foreign parent company's total number of outstanding shares; and
- The foreign parent company and the Korean subsidiary must have agreed on the chargeback of stock option expense in written form

- Interest Rate on Inter-company Loans

The tax law presently calls for applying the market interest rate on loans between a company and its related parties, which shall be the lower of the prescribed overdraft rate or the weighted average borrowing rate of the lender at the time of offering the loan. Any difference between the market rate and the actual interest rate of an inter-company loan shall be treated as deemed interest income to the lender. According to the latest amendment, the prescribed overdraft rate has been adjusted downward to 8.5% per annum from 9% per annum.

- Business Assets Eligible for Investment Tax Credit

With respect to the investment made in certain business assets until December 31, 2009, the tax law allows a small and midsize company to credit 3% of the investment against its corporate income tax due on the year the investment is completed. However, the tax credit is not granted to the investment in vehicles, transportation equipment, supplies and other specified tangible assets.

According to an amendment to the tax law effective on April 7, 2009, an exception to this rule is made to allow the tax credit for investment in supplies satisfying all the following conditions:

- they are held en mass for the purpose of the company's ordinary business;
- revenue is generated from those assets; and
- cost per unit amounts to 200,000 Korean won or more.

Amendments to Qualifications for Small and Midsized Company

Rules of the Basic Act on Small and Midsized Enterprise (SME) have been amended to become effective March 23, 2009. Under the amended rules, a company having any of the following attributes will no longer qualifies as SME:

- 1) Net worth of KRW 50 billion or more;
- 2) Average sales turnover of KRW150 billion or more for the three immediately preceding years

Besides, the two existing criteria for the graduation from SME include 3) 1,000 or more full-time employees or 4) total assets of KRW500 billion or more per balance sheet.

The new criteria of (1) and (2) above will be enforced from January, 2012 as companies need time to prepare themselves for a change in their entity status.

The amended rules have also strengthened the SME qualifications for affiliates of a large company (having total assets of KRW10 billion). If a company is 50% or more owned by another company, these two companies are regarded as a single entity for the purpose of determining the SME status. If any of the combined number of full-time employees, net worth, total assets or sales turnover of the two companies falls in the four foregoing criteria (i.e. net worth, average sales turnover, total assets and the number of full-time employees), neither of the

companies will qualify as SME. If a company is less than 50% owned by another company, a portion of full-time employees, net worth, etc. as measured by the percentage share of ownership is added to each party's number of full-time employees, net worth, etc. to assess whether it falls in any of the four foregoing criteria.

The latest amendments relating to affiliates of a large corporation will be enforced from January, 2011.

In addition, a company will no longer qualify as SME, effective from March 25, 2009 if 30% or more of the company's total outstanding shares (except shares without voting rights) is owned by a large company having total assets of KRW500 billion through direct or indirect shareholdings. The indirect ownership in this regard is measured as prescribed in Article 2, Enforcement Decree, Law for Coordination of International Tax Affairs.

Korea Joins Joint International Tax Shelter Information Center

The National Tax Service announced the Korea has joined the Joint International Tax Shelter Information Center (JITSIC) in March 2009 in an effort to curb cross-border abusive tax schemes.

NTS will deploy an official to work with other members in JITSIC. By joining JITSIC, NTS expects to effectively deter abusive cross-border tax evasion schemes through exchanging information and sharing of knowledge and experiences.

The Washington-based JITSIC was formed by the US, the UK, Canada, Australia, Japan and China to share expertise, best practices and experiences in tax administration to combat international tax evasion schemes.

Rulings

Foreign Technical Advisor's Assignment to Korea

In a recent tax ruling case, a Korean subcontractor carried on a construction work in Kuwait as engaged by a Kuwait company. The Kuwait contractor seconded its employees for an assignment in Korea which was expected to last for six months or more and the assignees have performed technical advisory work and examination of construction materials in relation to the construction project for the Kuwait contractor. They do not have income other than the salaries paid by the Kuwait contractor.

Under the ruling, it is determined that the place where the assignees performed technical advice and examination does not constitute a permanent establishment (PE) for the Kuwait contractor in Korea under the Korean corporate income tax law and the Korea-Kuwait income tax treaty (*kukjesewon-543, 2009.3.13*).

Payment Received from a Non-resident Having no PE in Korea

A recent tax ruling addresses the applicability of zero-rate value added tax (VAT) on the payment received for the provision of services or goods by a

domestic company in a foreign currency from a foreign company having no PE in Korea. In the referred case, the domestic company deposited the payment in its foreign currency bank account instead of converting it into the Korean won and utilized the foreign currency in paying salaries to its employees.

The ruling provides that as long as the receipt of the foreign currency from overseas can be confirmed with a receipt confirmation slip issued by the foreign exchange bank, such provision of goods or services may be eligible for zero rate VAT (*Buga-200, 2009, 1.14*).

Return of Leased Equipment to Foreign Owner

When a domestic company leases equipment from an overseas lesser without the title transfer and returns it to the owner when the lease is terminated, the return of the leased equipment to the overseas owner shall not be deemed as the supply of goods subject to VAT, according to a recent tax ruling. When the equipment is returned to its overseas owner, it is declared as a transaction without consideration for customs clearance purposes. (*Buga-901, 2009.3.6*)

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 particular facts involved. For more information, please contact your usual Samil PwC client service team or professionals listed below.

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2009 년 5 월의 교육프로그램

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