



Samil Commentary

Korean Tax Update

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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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Tax Incentives to Promote Job Sharing:

According to the recent amendment, a 50% tax deduction is allowed to a corporate taxpayer for a pay cut made as part of a job-sharing scheme intended to avoid lay-offs. The deduction will only be granted with respect to employees (excluding employees having contracted employment term of less than one year, directors, board members, largest shareholders, etc.) in qualifying small and midsize enterprises (SMEs). The qualifying SMEs shall have the following attributes:

- the company suffers from management difficulties such as 10% or more decrease in annual turnover, 10% or more decrease in annual production volume or 50% or more increase in average monthly inventory from 2008;
- their full-time employment is maintained at their level in the prior year; and
- the annual gross pay per full-time employee as calculated in a prescribed manner declines from that of the prior year.

Qualifying SMEs may claim 50% of the reduced portion of wages as a deduction in calculating their taxable income for two years of 2009 and 2010.

For the employees of qualifying SMEs, 50% of the reduced portion of wages may be claimed as a deduction in calculating individual income tax on their earned income. The income deduction shall be limited to KRW10 million per employee for two years of 2009 and 2010. And the deduction shall not be available to employees of large companies.

Tax incentives for corporate restructuring

Under the latest amendment, three-year installment payment after a grace period of three years will be allowed until the end of 2010 with respect to corporate income tax or capital gains tax arising from the sale of assets, donation of assets owned by shareholders to an ailing subsidiary, securities swap and a transfer of a capital-reduced company as part corporate restructuring. However, tax will be recaptured if a restructured company ceases its operations within three years or the corporate restructuring plan fails to be implemented as proposed or the debt to equity ratio exceeds a pre-set ceiling.

Tax Credit on Investment in Certain Industries

The tax law currently provides for a tax credit with respect to investment in business assets made in manufacturing and other prescribed industries until the end of December 31, 2009. Effective May 21, 2009, the amended rule extends the existing tax credit to four additional categories of industries including agriculture, fishery, maintenance and repair services and other personal service activities.

The amount of tax credit shall not exceed the sum of 10% of the investment for the fiscal year whose tax liability is due on or before December 31, 2009.

Besides the existing 10% tax credit, an additional 10% tax credit will be granted to the excess amount of investment if the combination of new investment made in 2009 and investment in process as of the end of 2009 exceeds a company's annual average investment for the three immediately preceding years.

Qualified Foreign Intermediary for Withholding Tax Exemption for Foreign Investment in Government Bonds

Subsequent to the amendment of income tax laws that exempts nonresidents and foreign corporations from individual or corporate income tax on interest arising from investment in government bonds and monetary stabilization bonds in May, details have been set forth for implementation of the new rule.

According to the details, nonresidents and foreign corporations intending to directly invest in those bonds must file with the withholding agents their applications for exemption from individual or corporate income tax on any gain

from the sales of such bonds, together with copies of resident certificates issued by their residential jurisdictions. Those certificates may be replaced with passport or visa copies for individual investors and copies of fund creation certificate or deed of trust for public funds.

The tax exemption will also be available when foreign residents invest in government bonds or monetary stabilization bonds through a qualified foreign intermediary as authorized by the National Tax Service.

Qualified foreign intermediaries must be headquartered in a country with which Korea has entered into an income tax treaty. Such foreign intermediaries shall perform the functions similar to those of the Korea Securities Depository or can render securities depository service. Those intermediaries are obliged to keep information on transactions or securities holdings for respective investor account and file a statement of those bond holdings by investors with the NTS on a quarterly basis. If requested by the NTS, investors' personal information and investment details must be submitted within 30 days from the date of request.

The exemption would apply to interest payment or capital gain made on or after the enforcement date of the amended rule or May 21, 2009.

Government Programs to Support Shifts

Apart from tax incentives to promote job sharing, the government has announced a series of programs to support employee work shifts intended to avoid lay-offs. These programs include direct financial aid for suffering companies' work shift plans, low-interest loans with one-year grace period for SMEs maintaining their employment at a stable level and subsidy for corporate job placement programs for

leavers.

One of the government programs will provide financial aid equaling one-third of the reduced portion of wages due to shortened work hours for a company adopting work shifts. To receive the financial aid, there must be signs of business difficulties as prescribed in the government guidelines (e.g. 10% decrease in sales or production volume, 50% increase in average inventory, etc.)

The subsidy will be calculated in the following formula: (average monthly wage before work shift/ monthly work hours x the number of reduced work hours due to work shift) x 1/3

The subsidy will be made available for six months from the date the work shift is implemented.

The government's subsidy will be available for business places temporarily. Those wishing to receive this temporary government aid shall file their work shift plans no later than the end of December 2009. The government's support for work shift is estimated at 18.2 billion won in 2009.

In addition, when a company provides job replacement services for its employees forced to leave the company due to business difficulties, the government will reimburse the entire amount (two-thirds for large company) of labor costs, office equipment rental fees as well as professional training fees as calculated in a prescribed manner. If a company outsources the job replacement programs, a certain portion of outsourcing cost will be reimbursed under the government program.

Rulings

Payment in Korean Won made by a Non-resident's Free Korean Won Account

According to a recent ruling, the zero-rate value added tax (VAT) shall be applicable when a domestic company provides services in Korea to a foreign company having no permanent establishment (PE) in the country and payment for the services is made in Korean won through a FREE Korean won account which the foreign company has opened with a local foreign exchange bank.

The ruling states the provision of services in the referred case constitutes the supply of goods or services in return for foreign currency which is eligible for the zero-rating. (*JaeBuga-204, 2009, 3.10*).

The latest ruling provides a different answer from the prior similar ruling issued by the National Tax Service (*Buga-381, 2009. 1.29*), which denied zero-rating for the payment received by a domestic company in Korean won in return for the provision of services in Korea to a foreign company without PE in the country when the payment is made through a nonresident Korean won account (not free Korean won account) with which the foreign company has opened with a local foreign exchange bank.

Free Korean won account is designed to liberalize trade of Korean currency by allowing non-residents to deposit the money remitted from abroad or carried into Korea, into a free Korean won account, and make overseas remittance for the full balance. Disposal of deposits in the free Korean won account is limited to certain purposes including the payment to Korean residents for won-denominated transactions.

Classification of Income Arising from Sale of Shares through Investment in Offshore Fund

A recent ruling is about a case where a Korean resident invests in an offshore fund A (Exempted Limited Partnership, ELP) established in Cayman Islands, which is dedicated to

participate in another offshore fund B as a limited partner to invest in securities issued by corporations in a third country. According to the ruling, when B transfers its foreign securities and the consideration is paid out all the way up to the Korean resident investor, such income shall be treated as dividends to the Korean resident rather than capital gains and shall be taxed as such. (*Jaesodeuk-177, 2009. 3.19*)

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.

David Jin Young Lee	82- 2-709-0557	jylee@samil.com
IlHwan Oh	82-2-709-0897	ihoh@samil.com
Dong-Keon Lee	82-2-709-0561	dklee@samil.com
Dong-Bum Kim	82-2-709-7900	dbkim@samil.com
Sang-Keun Song	82-2-709-0559	sksong@samil.com
Alex Joong-Hyun Lee	82-2-709-0598,	alexlee@samil.com
Henry An	82-2-3781-2594,	henryan@samil.com
Shin-Jong Kang	82-2-709-0578	sjkang@samil.com
Sang-do Lee	82-2-709-0288	sdlee@samil.com
Sung-Young Kim	82-2-709-4752	sykim@samil.com

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2009 년 7 월의 교육프로그램

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