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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Korea to Enhance Tax Incentives to Facilitate R&D and Green Energy Investment

The Ministry of Strategy and Finance has announced its plans to enhance or extend the existing tax incentives for research and development (R&D) or green energy investment as part of its drive to promote job creation and economic recovery. The proposed tax incentives will be included in tax reform proposals for 2010 to be released by the government in September 2009.

The main points of the plans are as follows:

- Companies are presently allowed to credit a certain portion of expenditures for their R&D activities. The existing tax credit will be extended to R&D in relation to core technologies as authorized by government ministries. In addition, the rate of credit will increase to 25% (35% for small and medium size enterprises (SME)).

- The tax credit rate will increase to 20% (30% for SME) from the current 3~6% (25% for SME) in relation to R&D in 17 pre-designated strategic growth industries including high-tech water treatment, green transportation system, value added food industry, global education service, green project financing, contents or software development, etc.

- R&D incentives, which have been limited to technology projects conducted in the manufacturing context, will be also available for projects conducted in service areas. Details on the concept and scope of service R&D will be set out by the end of December 2009.

- Investment in green technology facilities (new or renewable energy, low carbon energy, LED, etc.) will be added to the scope of energy saving facilities, which are currently entitled to 20% credit, compared with 10% credit for environmental protection facilities.

- Corporate or individual income tax for start-up SME in new energy-related technology industries will be reduced by 50% for the first four taxable years from their incorporation.

- The existing 5% to 30% tax credit for SME will be extended to Energy Service Companies ("ESCO"), which install energy saving facilities for other companies in need of technology and capital investment and recover its investment costs from reduced energy expenses.

- Dedicated funds for the promotion of investment in the green energy industry ("green funds") will be created. Public investors will be allowed credit of the smaller of 10% of their investment in qualifying green funds or 3 million won from their taxable income for the respective taxable year. Also, dividend income from such funds will be tax exempt, while contributions to such funds are limited to 30 million won per investor. Qualifying green funds shall invest at least 60% of their assets in securities issued by certified green energy project or service companies and ensure operations for a period of 3 years at least.

- A green technology certificate program will be introduced to permit income tax reduction for investment in certified green technologies or projects. Details of the program will be made available by the government task force team for the third quarter of 2009.

Online Filing of Business Suspension or Cessation

In the past, when a taxpayer suspends or ceases business, renews the suspended business, or reports VAT return on the ceased business, the taxpayer was required to visit the relevant tax office for reporting thereon.

From June 26, 2009, taxpayers no longer have to visit tax offices to complete this process. Instead, they may clear this process using the online program (Hometax) provided by the National Tax Service (NTS). To access the NTS Hometax program, taxpayers must subscribe this program and have electronic signatures.

This program is made available for individual and corporate taxpayers (joint business taxpayers are excluded).

Rulings

Definition of Establishment for Registration Tax Purpose

When a third party acquires all shares of an inactive company (located in a large city and has ceased business after its establishment registration) and thereafter changes directors, capital, name and target business of the acquired company, whether such transaction should be considered as establishment of a new company became an issue since establishing a new company in a large city is subject to heavier registration tax under the current Local Tax Law.

The Supreme Court's recent ruling thereon is that it shall not be deemed as an establishment of a new company if a third party changes the name, directors, capital and target business of the acquired company after acquiring all its shares and thus not be subject to heavier registration tax.

According to the ruling, while the Local Tax Law does not have any specific provision defining the establishment of a new company, its interpretation and requirements thereon is considered to be identical to Commercial Law, which requires establishment registration as one of the requirements for establishing a new company. Therefore, despite such acquisition may be allegedly intended to avoid imposition of heavier registration tax, it should not be considered differently as long as no individual or specific regulation exists prescribing otherwise.(*Daebup 2008Du 14067, 2009.5.14*)

Limit of Deductible Severance Pay for Officers

When a company's officer returns a portion of his/her salary to the company in order to join the company's battle to fight business difficulties, the limits of deductible severance payment shall be based on the salary actually paid to the officer rather than the officer's original salary received before returning a portion of his/her salary unless the company has amended its severance payment policy to ensure that severance payment for officers should be based on the amount received by officers before returning salaries in due course. (*Beobin-699, 2009.6.11*)

Taxable Income of Internet Shopping Mall Operator

An operator of an Internet shopping mall receives commissions from its Internet retailers in return for the arrangement and brokerage of transactions between Internet purchasers and retailers. When the Internet shopping mall operator issues discount coupons in its own accountability and capacity to promote sales of its Internet shopping mall, the discount amount shall be included in its commission income VAT tax base and thus subject to VAT.

However, when an Internet shopping mall operator offers a discount on commissions charged to retailers in accordance with a pre-arrangement between the operator and retailers, it shall be treated as a discount under Article 13 ② Item 1 of the VAT Law which is not included in the VAT tax base and thus not subject to VAT. (*Buga-824, 2009.6.16*)

Allocation of Common Input VAT

If a company which operates both taxable and tax exempt businesses in its several business places, is to apply the taxpayer-based VAT system (where the taxpayer can collectively file and pay VAT for several business places under one VAT registration), its common input VAT (i.e. input VAT incurred both for VATable and VAT exempt business) should be calculated for each business place in a prescribed manner (at the percentage share of the value of tax exempt supply to the total value of supply) in Article 61 ① of the Enforcement Decree of VAT Law (*Allocation of Input VAT*). Then, the company's head office or the principal business place may aggregate and file VAT returns thereon. (*Buga-814, 2009.6.15*)

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