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## Amended Enforcement Rules of the Foreign Investment Promotion Act

The Enforcement Decree of the Foreign Investment Promotion Act (FIPA) has been amended to set out details as delegated by the revised FIPA concerning foreign investment in nonprofit organizations, eased cash grant requirements, etc. The amended enforcement rules became effective on October 28, 2007.

According to the amended rules, foreign investment meeting any of the following criteria will enjoy incentives available for the qualified foreign direct investment under the FIPA.

- Investment in a nonprofit organization which should have at least five full-time research staff (a) having bachelor degree in a science and technology area and at the same time three-year or more research experience or (b) having master degree in a science and technology area;
- Investment in a nonprofit organization engaged in R&D activities for designated high-tech industries as prescribed in the Special Tax Treatment Control Act; or
- A minimum investment of 50 million won in an existing nonprofit organization established for purposes of academic, art, medical or educational promotion or in a regional headquarter carrying on an international cooperation and development project of the government or the private sector.

Also, the amended enforcement rules make cash grant also available to:

- A regional headquarter of a multinational company which should control the multinational's operations in at least two out of three or more countries in which the multinational has invested; or
- Investment in a regional strategic industry as specified by the Special Act for Balanced National Development, which is deemed to contribute to the development of the regional economic growth.

In addition, the amended rules make a few changes to the existing foreign investment zone system to include:

- A minimum foreign investment of US\$20 million in a tourist hotel or the leisure industry as specified in the Enforcement Decree of the Tourism Promotion Act;
- The minimum capital investment for a foreign investor in new or additional R&D facilities in a foreign investment zone lowered from US\$5 million to US\$2 million.

Other changes are made to improve administrative bureaucracy:

- A foreign company acquiring outstanding shares in a domestic company may file a notification of investment in 30 days from the acquisition date if the domestic company is a listed company. Previously, the notification had to be filed prior to the acquisition.
- A new provision sets forth details on the early repayment of long-term foreign loans (having maturities of five years or longer).
- The certification of imported capital goods

should be filed prior to import clearance rather than shipment. Used capital goods are no longer subject to this certification requirement.

### **Rules for REITs Amended to Simplify Procedures for REIT Establishment and Operations**

Effective October 15, 2007, the regulations of the Real Estate Investment Trust (REIT) Act have been amended. The amended rules include three major changes intended to simplify procedures for establishment and operations of REITs, ease the minimum capital requirements and introduce a new class of REIT specializing in real estate development. Major points of the revised regulations are as follows:

- The simplified procedures allow the establishment and operation of a REIT prior to offering shares to the public. The previous regulations required several procedures prior to the establishment of a REIT, including a preliminary authorization by the Ministry of Construction and Transportation, public offering of shares and chartering a REIT. The simplified procedures are expected to shorten the period to obtain the authorization by 20 days to 40 days.
- The minimum capital requirement for a REIT is lowered from 25 billion won to 10 billion won. A REIT shall have at least one billion won in paid-in capital at establishment and the remaining capital may be secured within six months from the date a REIT is authorized to operate.
- A REIT is required to offer at least 30% of shares to the public. Exception to the 30% requirement will be allowed if public institutional investors, i.e. the National Pension Service, Government Employee

Pension Service and the Korea Teachers Pension, underwrite 30% or more of the shares.

- Even when an investor holds more than 30% ownership in a REIT, the investor's voting right is limited to 30% in order to protect the minority shareholders' right. An exception to the voting right limitations will be granted for public institutional investors. Such investors will be allowed to exercise voting rights to the extent of their ownership ratio.
- A new class of REIT that specializes in real estate development is introduced. Such REIT will not be subject to the existing restriction that a REIT must not invest in real estate development in excess of 30% of its assets.
- Borrowing limitations which were previously set at twice the net equity of a REIT are eased to ten times with a special resolution in the general meeting of shareholders.

### **Unified Code System for Four Social Security Payments From January 2008**

The government has announced its plan to introduce a unified code for four social security payments from January 2008. The unified code system will integrate the existing three different codes to create a single code applicable to all four categories of social security payments, i.e. national pension, health insurance, employment insurance and industrial accident insurance payments.

The single code system will allow companies to administer their filings and payments of four social security taxes under a single code in a consistent manner. The single code will be an 11-digit code (10-digit business registration

number of each business place and one-digit social security number). In the absence of business registration number, a 10-digit quasi-registration number will be used for this purpose.

### **Revised NTS Notice on Tax Reconciliation Statement Filing**

Generally, corporations having annual revenue of seven billion won for the immediately preceding year or companies subject to the external auditor requirements are required to file tax returns including annual tax reconciliation statements prepared by a certified public accountant or a licensed tax accountant.

The requirement also applies to:

- Companies that receive corporate income tax exemptions, reductions or other tax benefits as specified by the tax law if their annual revenue amounts to 500 million won or more for the immediately preceding taxable year:
- New companies established within the past two years from the closing date of the concerned taxable year if their annual revenue amounts to 500 million won or more for the immediately preceding taxable year:

The revised notice lowers the 500 million won threshold to 300 million won. For new companies, the concerned taxable year will be the base year for judging the annual revenue threshold, according to the revised NTS notice.

The notice will apply to taxable years beginning on or after January 1, 2008.

## Rulings

### Input VAT Deduction

In a case where a company carrying on a municipal and residential development project obtains an authorization by the concerned municipal government on the condition that the company builds infrastructure facilities on a BOT (Build-Own/Operate-Transfer) basis, the input VAT the company paid for the construction of such infrastructure facilities would be deductible, according to a recent ruling by the Ministry of Finance & Economy (MOFE). MOFE interpreted that the input VAT was incurred in relation to the company's own business. (*Jaebuga-534, 2007.7.13*)

Prior to this latest ruling, the tax and accounting regulatory bodies were divided over whether the input VAT was related to the purchase of goods to be used for the company's business in the prescribed case.

Eliminating such controversy, the MOFE has ruled that the input VAT for the construction of such facilities (i.e. to be contributed to the government) shall be related to the constructing company's own business and therefore be deductible. Nevertheless, the ruling provides that the input VAT charged in relation to capital expenditure for the purchase of land would not be deductible.

The latest MOFE ruling will be applicable to the supply of goods or services to occur on or after July 13, 2007.

### Timing of Supply

Company X made a portion of payments in advance of the supply of service to Company Y with which it concluded a service agreement, and received a tax invoice from Company Y for the payment before the services were rendered. The supply of service took place later and was

terminated after a certain period of time.

In this case, a recent ruling provides that the timing of issuing a tax invoice can be treated as the timing of supplying services and thus the relevant input VAT may be deductible in the VAT period of tax invoice issuance even when the payment was made in a different VAT period. (*Jaebuga-634, 2007.9.3*)

Generally, tax invoices are to be issued at the time of supply or the transaction. Exceptionally, however, the VAT law allows a tax invoice issued by a taxpayer before goods or services are actually provided as long as the taxpayer receives considerations for the supply of goods or services.

### SPC's Unpaid Dividends after Declaration

If an asset-backed securitization special purpose company (SPC) declares to distribute 90% or more its distributable profits as dividends, and records dividend payable per books, the dividend declared deduction under Article 51-2 of the Corporate Income Tax Act would be applied. For the unpaid dividends to a foreign shareholder who has no permanent establishment in Korea, tax withholding shall be made properly in accordance with the deemed payment rule for dividends under the Corporate Income Tax Law. And such withholding tax will not be refunded even when the foreign shareholder gives up its right to receive dividends payment, according to a ruling issued by the National Tax Service. (*Seomyon2team-1787, 2007.10.5*)

### Transfer of Tax-exempt Property

A company acquired property in an industrial complex and received the exemption from acquisition and registration taxes. And it transferred the title to the property to a new

company created in a qualifying spin-off. In this case, the company will not be subject to back taxes under Article 276 of the Local Tax Act if the transferred property is utilized by the new company for purposes as initially authorized for tax exemptions. (*Sejeong-2054, 2007.6.5*)

The Act prescribes back taxes for the exempted local tax if such purchased property is not utilized for purposes without due reasons as specified in the law for three years from the purchase date or if such property is sold or used for other than authorized purposes within two years from the purchase date.

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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