

Tax News Flash

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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.

Final Negotiation Scheduled for Revision of Korea-US Tax Treaty

It has been over 10 years since the discussion for the amendment of the Korea-US Tax Treaty was initiated by the Korean Ministry of Strategy and Finance (formerly the Ministry of Finance and Economy) and the US Treasury Department in March 1999. After years of deadlock, the two governments have resumed the discussion back in June 2009 and agreed to come to the final negotiating table in January or February 2010.

With regard to the current Korea-US Tax Treaty, which took effect as of Oct. 20, 1979, there has been much criticism from industries and academia in Korea over the outdated provisions and the unfairness of the existing Korea-US Tax Treaty as well as the treaty benefits in favor of US investors and individuals.

Contentious Issues under Table

- **Capital Gains Taxation at the Source Country**

Under Article 16 of the Treaty, any capital gain from the share transfer is taxed only in the resident state unless the person or the company maintains a fixed place of business in the source state. The Korean government has been strenuously requesting a revision to this rule to their US counterpart in a way that would allow taxation at the source state if certain conditions are met.

- **Reduction of Withholding Tax Rate on Royalties**

Under Article 14 of the Treaty, royalties are subject to tax withholding in the source state at the rate of 10% or 15%. Many US licensors have been paying 15% (16.5% including resident surtax) withholding tax in Korea on their royalty income received from Korean licensees and the US government has been requesting a reduction of the withholding rate to 5% arguing that the high withholding rate impedes free flow of the intellectual property.

- **Individual Income Tax on Foreign Individual Celebrities**

Even though many US celebrities have earned much profit from concerts and events in Korea, it has been hard to tax on their profits under the existing provisions in the Treaty. Korea has revised the relevant taxation rules on foreign celebrities in the domestic tax law a couple of years ago, now seeking some matching changes in the Treaty provision to allow the actual enforcement of the new rules.

Other than the above, some old languages and provisions in the existing treaty may be revised to be consistent with the up-to-date OECD Model Convention.

Please note that the article above is sourced from a news article, rather than from an official press release by the government. Actual schedules for and the results from the final negotiation are subject to change. PwC will issue a follow up article once the amendments to the Korea-US Tax Treaty are finalized.