



PwC Law Firm Services News Flash -- Insight for Firms Investigating the Opening of an Office in South Korea

Yesterday's South Korea Supreme Court Ruling Provides Key Interpretation of Korean Tax Law

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We have been informed by our colleagues at Samil PwC South Korea that on January 27, the Korean Supreme Court issued its ruling on the applicable Korean tax treatment of a U.S. Limited Partnership. In upholding the decision of the lower court (the High Court), the Supreme Court confirmed the High Court's interpretation that in determining a foreign entity's characteristic for purposes of applying Korea's tax laws, the foreign entity's legal characteristic should first be considered, and then a decision made as to which entity type currently existing in Korea the foreign entity most closely resembles. Based on this approach, the Supreme Court ruled that the concerned U.S. LP is more like a Hapja Hoesa (a type of company under Korean Commercial Law), and thus, the US LP should be regarded as a foreign corporation for tax purposes. As a foreign corporation, the U.S. LP will be subject to Korea's corporate income tax under the corporate income tax law, instead of the U.S. LP partners being subject to individual income taxes in Korea at the partner level.

As the legal market in South Korea is beginning to open to outside law firms, this ruling provides much-needed clarification when considering the best entity for holding a Korean office. Please note that, however, the Supreme Court case is only for a US LP, not for a US LLP which has different legal characteristics from those of a US LP, and it is based on the former Korean Commercial Act which did not provide for entity types similar to a US LP and a US LLC. According to the revised Commercial Act effective from April 15, 2012, new entity types will be introduced in Korea, which are called 'Hapja Johap' (similar to a US LP) and 'Yuhan Chaikim Hoesa' (similar to a US LLC). In this regard, since 'Johap' type of entity is generally not regarded as a corporation, thereby subject to the individual income tax law, there still exists an uncertainty as to whether this Supreme Court case is applicable to a Korean office of a US LLP, which is opened after the enforcement of the revised Commercial Act.

PwC Law Firm Services, in conjunction with Samil PwC South Korea, is at the forefront of providing its clients with information and advice on the opening of this long-awaited, new legal market. For more information, please contact Stanley Kolodziejczak at 646-471-3160, Gregg Sincoff at 646-471-1335, or Nancy Regan at 646-471-6104 in New York, and Alex Joong-Hyun Lee at 82-2-709-0598, or Sang-do Lee at 82-2-709-0288 in Seoul, or any member of your PwC Law Firm Services Team.

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