



# Korean Tax Update Samil Commentary

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## Table of Contents

### Tax News

- Bill to Amend Presidential Decrees in Response to Changes in Tax Laws, Including the Special Tax Treatment Control Law
- Governments to Conduct Comprehensive Evaluation and Preliminary Feasibility Assessment of Tax Expenditures for 2025
- Government to Implement Supply Chain Stabilization Plan for 2025, including Tax Measures to Support Core Mineral Recycling
- Local Tax Revenue Increases by KRW 1.6 Trillion to Reach KRW 114.1 Trillion in 2024
- Tax Tribunal Releases Tax Appeal Statistics for Five Years

### Changes in Tax Laws

- Amended Presidential Decree of the Special Tax Treatment Control Law
- Amended Enforcement Rules of the Corporate Income Tax Law
- Amended Enforcement Rules of the STTCL
- Amended Enforcement Rules of the Individual Income Tax Law
- Amended Enforcement Rules of the Law for Coordination of International Tax Affairs
- Amended Enforcement Rules of the Basic National Tax Law
- Amended Enforcement Rules of the Comprehensive Real Estate Holding Tax Law
- Convention for the Avoidance of Double Taxation with respect to Taxes on Income between Korea and Andorra

### Rulings Update

- Whether business server equipment purchased for installation and use abroad would be eligible for the integrated investment tax credit
- Whether gains from the conversion into Korean Won due to exchange rate changes would constitute deemed dividends arising from the capital reduction by a foreign subsidiary
- Method for determining large shareholders of shares transferred and relisted from the KONEX market to the KOSDAQ market
- Whether the inheritance tax deduction would apply to a house that has not been cohabited for 10 years or more due to overseas work or study



# Tax News

## Bill to Amend Presidential Decrees in Response to Changes in Tax Laws, Including the Special Tax Treatment Control Law

In March 2025, several tax laws, including the Special Tax Treatment Control Law (STTCL), were partially amended and proclaimed. Following these amendments, the Ministry of Economy and Finance (MOEF) announced the government's bill to propose changes to the relevant Presidential Decrees (the 'Bill'). Below is a summary of the key proposed changes.

### *Amendments to the Presidential Decree of the STTCL*

1. **Specifying the type of mid-sized publishing companies eligible for a special tax reduction of small and midsize enterprises (SMEs):** Under the amended STTCL, the special tax reduction of 10% can be available to mid-sized companies engaged in publishing business in designated Seoul metropolitan areas, among others. The Bill proposes to specify the type of publishing business eligible for the 10% special tax reduction to general book publishing business.
2. **Research and development (R&D) facilities for national strategic technologies, as well as new growth and source technologies:** Under the Bill, these facilities will be added to the eligible list that is subject to deliberation by the Technical Review Committee responsible for R&D tax credits.
3. **Definitions** of national strategic technology R&D facilities, etc.
  - **National Strategic Technology R&D Facility:** Recognized jointly by the MOEF and the Ministry of Trade, Industry and Energy (MOTIE) for research and testing of national strategic technology, following a technical review for R&D tax credits.
  - **New Growth and Source Technology R&D Facility:** Similarly recognized by the MOEF and MOTIE for research and testing of new growth and source technologies, following a technical review.

\* This definition will also apply to facilities conducting concurrent R&D for other technologies.
4. **Regulations for post-tax credit management for R&D facilities** associated with national strategic technologies as well as new growth and source technologies.
  - **Post-Management Period:** From the date of investment completion until the end of the third fiscal year following the fiscal year in which the investment completion date falls.
  - **Post-Management Criteria:** Facilities will be treated as being used for other purposes and will not qualify as R&D facilities for national strategic technologies or new growth/source technologies if the cumulative usage ratio (A or B) during the post-management period is 50% or less, calculated as follows:
    - A. Time spent on national strategic technology R&D activities using designated R&D facilities divided by the total R&D activity time using those facilities.
    - B. Time spent on new growth and source technology R&D activities using designated R&D facilities divided by the total R&D activity time using those facilities.
  - **Tax Payment:** If the post-management criteria are not met, the amount equivalent to the tax credit (the difference\*) plus interest must be paid. \*For example, the difference



refers to 'tax credit amount for national strategic technology R&D facilities, etc.' minus 'tax credit amount for general facilities'.

- **Documentation Requirements:** To substantiate the eligibility for tax credits, taxpayers must prepare, retain, and submit documentation related to usage time when filing their tax returns for the last fiscal year of the post-management period. Detailed guidelines for documentation, such as the subjects of time measurement, measurement periods, and preparation methods, will be stipulated by the MOEF regulations.
- 5. Defining facilities for the commercialization of national strategic technologies and R&D facilities in the semiconductor sector to apply for tax credits.
- 6. Specifying necessary matters in response to the new special treatment for overseas construction subsidiaries, which has been established under the amended STTCL, allows qualifying domestic corporations to treat the amount equivalent to the conversion difference of loans to equity for overseas construction subsidiaries as a deductible expense, up to 10% of the conversion difference amount for a maximum of 10 years.
  - **Conversion Difference Amount:** Defined as the book value of loans, etc. at the time of loan to equity conversion minus the market value of the acquired shares or other assets. If any amount was previously included as deductible at the time of conversion, it must be additionally deducted from the calculated value.
  - **Transfer of Shares through Merger or Spin-Off:** Corporations that assume shares of an overseas construction subsidiary due to mergers, spin-offs, or similar transactions will be entitled to continue the deductions.
  - **Post-Deduction Management:**
    - Any increase in the book value of the overseas construction subsidiary's net assets will be added to gross income.
    - The proportion of disposed items will be added to gross income upon the disposal of acquired shares or other assets.
- 7. E-sports event operating expenses eligible for a new tax credit
  - **Eligible expenses:** Directly incurred expenses for the operation of e-sports events, including prize money, venue rental fees, and equipment rental fees
  - **Exclusions:** Subsidies from central and local governments, payments to related parties (other than prize money) and corporate business promotion expenses
- 8. Tax incentives for hiring individuals with career interruptions
  - **Care for Disabled Children:** A tax credit will be available for hiring individuals who had a disabled child at their time of resignation.
  - **Family Caregiving:** A tax credit will also be available for hiring individuals who lived with and provided care for elderly or disabled direct ancestors at the time of their resignation.

#### *Amendments to the Presidential Decree of the Basic National Tax Law*

1. Guidelines for imposing enforcement fines (introduced for failure to submit required documents during a tax audit).
  - **Imposition criteria:** Based on the period of non-compliance, including any audit suspension due to the failure to submit required documents, multiplied by the daily fine amount.
    - **Daily Fine Amount:** Average daily revenue over the preceding three tax periods, multiplied by a factor of 0.001 to 0.002. Specific rates: 2/1,000 for daily revenue under KRW 1.5 billion; 2/1,500 for daily revenue over KRW 1.5 billion and up to KRW 3 billion; and 1/1,000 for daily revenue over KRW 3 billion. If there is no



average revenue or it is difficult to calculate the average revenue, a fine of up to KRW 5 million per day may be imposed.

- **Written Notification:** Prior written notice will be provided, informing taxpayers of the amount, reason, and deadline for any fines to be imposed.
- **Recurring Penalties:** Fines will be imposed every thirty days following the expiration of the deadline.

2. New rules for the deliberation and operation of the **Enforcement Fines Review Committee**

- They will cover key aspects, such as deliberation matters, composition and term of committee members, public disclosure options, and criteria for disqualification and recusal.

#### *Amendments to the Presidential Decree of the Inheritance and Gift Tax Law*

1. Specifying the types of capital transactions that may constitute deemed gifts due to the shift of profits through related party transactions with specific corporations. These include:
  - **Disproportionate capital reduction**, where shares in a corporation that has a special relationship with a controlling shareholder in a specific corporation (hereinafter referred to as a specially related corporation) are cancelled in a manner that is not in proportion to the respective shareholding ratio, or are canceled at an unusually high or low price.
  - **Unequal capital increase** where certain shareholders in a specially related corporation either forgo subscribing to new shares or acquire them at high or low prices.
  - **Contribution in kind at inflated or discounted prices** through the acquisition of shares or other assets of a specially related corporation.
  - **Stock conversion** where shares are obtained through convertible bonds, etc. at prices that are higher or lower than the conversion price.
  - **Excessive dividends not aligned with shareholding ratios**, for instance, when a related party chooses to forgo dividends from a specially related corporation.
  - **Mergers at unfair ratios** between a specially related corporation and its related parties.
  - **Comprehensive exchange or transfer of shares affecting ownership values**, between a corporation with a special relationship and a related party of that corporation, resulting in changes to ownership shares or their respective values.
2. Requirements for Investment Associations to submit detailed information such as securities holdings and transaction activities.
  - **Applicable associations:** Investment associations established for investment purposes under Article 703 of the Civil Code; individual investment associations governed by the Venture Investment Promotion Act; new technology business investment associations regulated by the Specialized Credit Finance Act; and specialized investment associations under the Industrial Act for Materials, Parts, and Equipment.
  - **Submission deadline:** All required data, including details of securities holdings, transaction records of investment associations, member investment shares, and changes in share ownership, must be submitted within three months from the end of a tax year.

#### *Amendments to the Presidential Decree of the Individual Income Tax Law*

1. Tax exemption on insurance policy gains resulting from the securitization of life insurance death benefits.
  - **Requirement for a 10-year contract period:** Rationalized to begin from the date of the original insurance contract prior to any modification to the insurance policy.
  - **Applicable criteria:** Life insurance death benefits of KRW 900 million or less, and



monthly savings-type whole life insurance policies, among others.

2. Broadening scope of fractional investment products.
  - **New qualifying product:** Beneficiary certificate issued by a trust company that has received a single asset in trust under the Asset-Backed Securitization Act and sold through a public offering (to fifty or more investors) in accordance with the Financial Investment Services and Capital Markets Act.

## Governments to Conduct Comprehensive Evaluation and Preliminary Feasibility Assessment of Tax Expenditures for 2025

The government is set to undertake a thorough evaluation of 23 special tax treatment provisions—such as tax reductions, exemptions, non-taxation, income deductions, tax credits, preferential tax rates, and tax deferrals, collectively referred to as “tax expenditures” — scheduled to expire at the end of this year. This evaluation will also include a selective review of four additional tax expenditure items to assess the outcomes of tax support for 2025 and ensure effective management. Additionally, the government intends to include a tax credit for carbon-free energy purchase costs in the preliminary feasibility assessment. The results of this evaluation will be reviewed and discussed among government ministries to determine whether to extend the expiring tax expenditures before being incorporated into the tax reform proposals planned for 2025.

	<b>Expenditure items subject to review</b>
<b>Preliminary feasibility assessment (1 item)</b>	<p>1. Expenditures incurred to purchase carbon-free energy (renewable energy) This initiative aims to alleviate electricity costs for companies utilizing renewable energy by providing a tax credit to offset the additional expenses incurred from purchasing renewable energy sources.</p>
<b>Mandatory in-depth evaluation (23 items), scheduled to expire at the end of 2025</b>	<p>1. Special tax reduction or exemption for SMEs 2. Tax credits for contributions to funds promoting mutually beneficial cooperation between large corporations and SMEs 3. Tax incentives for domestic corporations investing in venture businesses 4. Income deductions for investments in venture investment associations 5. An integrated employment-related tax credit 6. Tax reduction for companies relocating factories outside the designated Seoul metropolitan area 7. Tax reductions for corporations moving their headquarters outside the designated Seoul metropolitan area 8. Gift tax reductions for farmland gifted to farming children 9. Special tax treatment for cooperative corporations under the CITL 10. Deductibility of reserve fund appropriations for business purposes 11. Income deductions for collective savings accounts for housing subscriptions 12. Special tax treatment for tax-free comprehensive savings 13. Special tax treatment for capital investments in cooperatives 14. Tax credits for rental business operators who reduce rents for commercial properties 15. Corporate income tax reduction or exemption for startups incorporated in crisis areas 16. Zero-rated VAT for machinery and materials used in agriculture, livestock, or forestry industry 17. VAT exemptions for greenhouse gas emission permits 18. VAT exemptions for electricity used in city buses</p>

	<ol style="list-style-type: none"> <li>19. Indirect tax exemptions for petroleum products used by coastal passenger ships</li> <li>20. VAT refunds for foreign tourists receiving medical services for cosmetic surgeries</li> <li>21. Deductions for input VAT on recycled waste resources</li> <li>22. Exemption from the securities transaction tax for transactions that enhance financial market efficiency and stability</li> <li>23. Income deductions for expenses incurred via credit cards and similar payment methods</li> </ol>
<b>Selective in-depth review (four items)</b>	<ol style="list-style-type: none"> <li>1. Non-taxation of capital gains from the sale of shares by venture capital firms</li> <li>2. Exemption from the securities transaction tax to support SMEs</li> <li>3. Tax credits for expenditures related to video content production</li> <li>4. Tax reduction or exemption for small housing rental business operators</li> </ol>

## Government to Implement Supply Chain Stabilization Plan for 2025, including Tax Measures to Support Core Mineral Recycling

On March 25, the government announced measures to promote the recycling of core minerals as part of the 2025 Supply Chain Stabilization Implementation Plan. The initiative of core mineral recycling involves recovering key resources, including rare metals, to be used as industrial raw materials, ensuring a stable supply chain for essential minerals used in advanced industries such as electric vehicles and semiconductors. The government plans to include technologies essential for supply chain stabilization in the categories of new growth and source technologies, as well as national strategic technologies, which are eligible for R&D tax credits and investment tax credits. Additionally, the government will consider providing tariff quotas in cases where there is a supply chain crisis or a substantial risk of such a crisis for items related to recycling.

## Local Tax Revenue Increases by KRW 1.6 Trillion to Reach KRW 114.1 Trillion in 2024

In 2024, the annual local tax revenue rose to KRW 114.1 trillion, marking a KRW 1.6 trillion increase from the previous year and exceeding the initial budget for local tax revenue by KRW 3.4 trillion. By major tax categories, acquisition tax and local consumption tax increased by KRW 1.6 trillion and KRW 1.2 trillion, respectively, compared to the previous year. However, local income tax experienced a decline of KRW 2.9 trillion from the previous year. The acquisition tax comprised the largest share of total local tax revenues in 2024, followed by the local consumption tax, local income tax, and property tax.

(in KRW trillions)

	2023	2024 (projections)	Change
Acquisition tax	24.3	26.0	1.6 (7%)
Local consumption tax	24.6	25.8	1.2(5%)
Local income tax	22.9	20.0	-2.9 (-13%)
Property tax	14.8	15.1	0.3 (2%)

## Tax Tribunal Releases Tax Appeal Statistics for Five Years

The Tax Tribunal has released its 2024 Tax Appeal Statistics Yearbook, indicating that a total of 10,178 cases were settled out of 13,356 filed cases, including those carried over from previous years. The appeal acceptance rate rose to 27.3%, reflecting a 6.4% increase compared to 2023. The table below illustrates tax appeal statistics over the past five years.

Year	Number of cases Filed	Number of cases settled	Acceptance ratio*	Increase (or decrease) compared to the previous year
2024	13,356	10,178	27.3%	6.4%
2023	20,030	16,485	20.9%	6.5%
2022	14,814	11,565	14.4%	12.7%
2021	16,588	12,147	27.1%	5.5%
2020	15,845	12,282	32.6%	16.0%

\* The acceptance ratio is calculated by dividing [the number of accepted cases (including cases reinvestigated)] by [the number of settled cases minus the number of cases withdrawn].

# Changes in Tax Laws

## Amended Presidential Decree of the Special Tax Treatment Control Law

### **Background of Amendment and Key Points**

The Special Tax Treatment Control Law (STTCL) has been recently amended to facilitate smoother corporate restructuring. Under the amended law, if an investing corporation transfers assets in accordance with the financial restructuring plan of the invested corporation to help repay its debts, the capital gains from those asset transfers will be exempt from tax for two years and will be deferred and evenly spread over the subsequent three years to be included in taxable income. In response to the amendment of the law, the amended Presidential Decree specifies that the amount eligible for this special treatment is calculated by taking the capital gains from the asset transfer, subtracting any tax losses carried forward, and applying the ratio of the amount used by the investing corporation to repay the invested corporation's debts relative to the asset's transfer price. If the invested corporation fails to repay the debt as specified in its financial restructuring plan, the proportionate amount of the capital gains will be adjusted by the ratio of the unpaid debt and subsequently included in the taxable income of the investing corporation. (Proclaimed and implemented on March 21, 2025)

## Amended Enforcement Rules of the Corporate Income Tax Law

### **Background of Amendment and Key Points**

The Presidential Decree of the Corporate Income Tax Law (CITL) has been amended to permit expenses resulting from the joint use of assets between non-investing business operators with a special relationship to be included as deductible expenses, based on equity ratio and usage frequency. Following this amendment, the amended Enforcement Rules of the CITL specify that fixed costs for tangible assets (excluding land and buildings) jointly used by non-investing business operators will be apportioned according to equity ratio, while other costs will be allocated based on usage frequency for deduction purposes. Additionally, the amended rules lower the interest rate used to estimate business income from real estate leasing from 3.5% to 3.1% per annum, aligning it with bank time deposit interest rates. To support corporate restructuring, where a domestic corporation undergoes a tax qualified spin-off, the amended rules enable the shares of a wholly-owned subsidiary of the domestic corporation that has a transaction ratio of 20% or more with the spun-off business division to also be transferred to the spun-off business division. (Proclaimed and implemented on March 21, 2025)

## Amended Enforcement Rules of the STTCL

### Background of Amendment and Key Points

The Enforcement Rules of the STTCL have been amended to outline key delegated matters and implementation details as follows: 1) If usage fees for sports facilities are not itemized from costs not directly related to usage, 50% of the total amount will be considered eligible for income deduction through credit card payments and similar methods; 2) lecture fees and costs for educational materials additionally incurred in providing education and training courses, which are intended for the domestic company's employees, to persons who are not employees will be included in qualifying human resources development expenses eligible for an R&D tax credit; 3) to enhance support for advanced strategic industries and future growth sectors, persons engaged in the development of both new growth and source technology or national strategic technology and that of general technology, an R&D tax credit will be available for their labor costs if over 50% of their working hours are dedicated to developing new growth and source technologies or national strategic technologies; and 4) the scope of facilities eligible for the integrated investment tax credit for the commercialization of new growth and source technologies as well as national strategic technologies has been expanded to include steel manufacturing facilities that utilize low-carbon raw materials and facilities for the production and processing of high-purity metal compounds used in cathode materials. (Proclaimed and implemented on March 21, 2025)

## Amended Enforcement Rules of the Individual Income Tax Law

### Background of Amendment and Key Points

The Individual Income Tax Law and its Presidential Decree have been amended to classify profits from the transfer of physical assets associated with fractional investment products—such as investment contract securities and non-monetary trust beneficiary securities—as dividend income. In line with this amendment, the amended Enforcement Rules specify the process for calculating dividend income for each investor in fractional investment products. This calculation is based on multiplying the dividend income per security by the number of securities held at the time of profit distribution, then subtracting any fees and commissions related to the operation of the fractional investment. Additionally, the interest rate used to compute business income from real estate leasing has been reduced from 3.5% to 3.1% per annum, aligning it with the interest rates on time deposits of financial institutions. To encourage the demolition of abandoned vacant houses, the period during which the application of a higher capital gains tax is suspended—even if the land is reclassified as non-business land due to the demolition of a building—has been extended from two years to five years following the date of demolition or destruction.



## Amended Enforcement Rules of the Law for Coordination of International Tax Affairs

### **Background of Amendment and Key Points**

Amendments have been made to the Law for Coordination of International Tax Affairs (LCITA) and its Presidential Decree to require a taxpayer to submit documentation proving the method of calculating the arm's length price where it intends to file an amended tax return for tax refund request based on the arm's length price in international transactions with foreign related parties. Additionally, the amendments specify the application criteria for the global minimum tax rules by reflecting the Administrative Guidance set forth by the OECD and the Inclusive Framework. In response to these amendments, the amended Enforcement Rules of the LCITA stipulate the following: i) types of documentation required to substantiate the method of calculating the arm's length price; ii) the method of calculating the amount of deferred corporate tax liability to be reversed; iii) the method of calculating the ownership ratios under the income inclusion rule; and iv) the forms required for reporting top-up tax allocation amounts. These amendments also address other matters delegated by the law and necessary for its implementation. (Proclaimed and implemented on March 21, 2025)

## Amended Enforcement Rules of the Basic National Tax Law

### **Background of Amendment and Key Points**

The amended Enforcement Rules lower the interest rate on national tax refunds that are either offset against other national taxes or refunded to taxpayers from 3.5% per annum to 3.1% per annum, aligning it with the average interest rate for one-year term deposits at commercial banks. Additionally, to strengthen the protection of tax information, when other institutions request tax information from tax officials, the request form for providing tax information will be revised to include whether the taxpayer has consented, thereby ensuring clear verification of whether the requirements for providing tax information are met. These changes aim to improve and supplement some deficiencies in the current forms. (Proclaimed and implemented on March 21, 2025)

## Amended Enforcement Rules of the Comprehensive Real Estate Holding Tax Law

### **Background of Amendment and Key Points**

Key changes in the amended Enforcement Rules include: 1) providing additional reasons for exempting reports on changes in employee housing excluded from the aggregation of tax base, thereby easing compliance burdens for taxpayers; 2) temporarily expanding the eligibility criteria for unsold newly-built houses to be excluded from the tax base aggregation, aimed at relieving the financial burden on the housing construction industry amid rising unsold inventories; 3) widening the regions where low-priced housing is exempt from being counted in determining a



single household with one house, to support balanced regional development across the country; and 4) simplifying the report form for excluding houses from the aggregation by reorganizing it into 22 forms based on housing type, with reassigned form numbers that align with the main provisions for the Enforcement Rules. (Proclaimed and implemented on March 21, 2025)

## Convention for the Avoidance of Double Taxation with respect to Taxes on Income between Korea and Andorra

### Key Points

A treaty to prevent double taxation on income and investments between Korea and Andorra has entered into force, effective April 1, 2025. The key points of the treaty include:

- **Business profits** attributable to permanent establishments, such as branches, factories, offices, etc. can be taxed only in the country where it is generated.
- **Dividends, interest, and royalties** are taxable in the source country within the limits of the withholding tax rate if the recipient is a resident of the other country and the beneficial owner of the income. Dividends are taxable at a rate not exceeding 5% of the gross amount if the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends throughout a 365-day period. A 10% tax rate applies in all other cases. Interest is taxable at a rate not exceeding 10% of the gross amount. A reduced tax rate of 5% applies if the interest is paid to a financial institution. Royalties are taxable at a rate not exceeding 5% of the gross amount. **Capital gains** from the transfer of real estate may be subject to taxation in the source country.
- **Entitlement to benefits** provision has been incorporated, stating that a benefit under this treaty is not granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this treaty. This aligns with Article 7 of the OECD Multilateral Convention to Implement Tax Treaty Related Measures.

# Rulings Update

## Whether business server equipment purchased for installation and use abroad would be eligible for the integrated investment tax credit

Under the Special Tax Treatment Control Law (STTCL), there are no explicit provisions for the integrated investment tax credit that limit the investment area of business assets to domestic regions, or exclude business assets used abroad from being eligible for the tax credit (Article 24 (1) of the STTCL). This raises the question of whether a domestic company engaged in the information and communications business can apply the integrated investment tax credit to business server equipment purchased for installation abroad.

The National Tax Service (NTS) has clarified that server equipment acquired domestically or abroad for use abroad does not qualify for the integrated investment tax credit. This interpretation appears to be based on several considerations: i) the previous temporary investment tax credit system, which was in place before the introduction of the integrated investment tax credit, aimed to support domestic economic adjustment; ii) the inclusion of the Kaesong Industrial Complex as an eligible investment area for the temporary investment tax credit indicated that eligible investment areas should be limited to domestic locations (*Article 23 (9) of the old Presidential Decree of the STTCL, newly inserted on March 10, 2008, and Article 23 (18) of the current Presidential Decree*); and iii) the difficulty in managing assets post-investment, such as leasing or disposal, if the investment area is expanded abroad. Therefore, similar to a previous tax ruling that excluded the application of the temporary investment tax credit to business assets used at overseas construction sites (*Beobgyubeobin 2010-222, 2010.7.23*), the integrated investment tax credit is also interpreted to apply only to business assets used domestically (*Seomyeon-2024-Beobin-1772, 2024. 11. 29.*).

**Observation:** It is necessary to be aware that business assets used abroad by domestic companies are not eligible for the integrated investment tax credit, regardless of whether the assets were acquired domestically or abroad. Additionally, the regulation on the excess corporate earnings reserves, which are subject to additional corporate income tax, also specifies that investments qualifying for exclusion from excess earnings reserves are limited to business assets acquired for use at domestic business places (*Article 100-32 (6)(1) of the Presidential Decree of the STTCL*). Consequently, the investment amount for business assets used abroad should be excluded from the eligible investment amount when calculating both the integrated investment tax credit and the excess corporate earnings reserves. However, it is worth noting that there is a Tax Tribunal precedent where the temporary investment tax credit was allowed for business assets initially acquired for domestic use but temporarily used abroad due to unavoidable circumstances (*Joshim2014seo1565, 2016.2.29*).

## Whether gains from the conversion into Korean Won due to exchange rate changes would constitute deemed dividends arising from the capital reduction by a foreign subsidiary

This case concerns a domestic corporation, which established a foreign subsidiary with capital of USD 1,000,000 (exchange rate of KRW 1,066.5/1 USD), receiving USD 500,000 (exchange rate of KRW 1,274.6/1 USD) as consideration for a 50% capital reduction by the foreign subsidiary, and immediately converts it into Korean Won. This foreign exchange transaction led to gains of KRW 104,050,000 due to exchange rate changes (KRW 1,274.6 – KRW 1,066.5 = KRW 208.1). The primary question in this case is whether these foreign exchange transaction gains should constitute deemed dividends arising from the capital reduction for consideration.

The NTS has clarified that an excess amount of the consideration received by a domestic corporation from a foreign subsidiary for a capital reduction over the amount used by the domestic corporation to acquire the respective shares in the foreign subsidiary would constitute deemed dividends due to the capital reduction. The NTS ruling further states that when the consideration for the capital reduction is received in foreign currency, the conversion into Korean Won should be based on the basic exchange rate according to the Foreign Exchange Transactions Regulations as of the date of the capital reduction resolution (*Seomyeon-2023-beobgyubeobin-3161, 2024.12.13*). This implies that i) the timing of recognizing gains or losses from the deemed dividends due to the capital reduction should be the date when the capital reduction is resolved at the shareholders' meeting of the foreign subsidiary (Article 13(1) of the Presidential Decree of the CITL); ii) foreign currency-denominated monetary assets and liabilities should be converted into Korean Won based on the basic exchange rate according to the Foreign Exchange Transaction Regulations as of the transaction date under the CITL (Act 76(1)(1) of the Presidential Decree and Article 39-2 of the Enforcement Rules of the CITL and Section 42-76...2 1 of the administrative guidance for the interpretation and application (namely, *Gibontongchik*) of the CITL); and iii) accordingly, deemed dividends due to the capital reduction by the foreign subsidiary should be calculated by subtracting the share acquisition amount converted into Korean Won as of the acquisition date of the domestic corporation from the consideration received by the domestic corporation for the capital reduction by the foreign subsidiary being converted into Korean Won as of the date of the capital reduction resolution.

**Observation:** This authoritative interpretation suggests that even if a domestic corporation receives consideration for a capital reduction from a foreign subsidiary in foreign currency equivalent to the capital invested at the time of the subsidiary's establishment, resulting in no gain in foreign currency terms, gains arising from the conversion of the foreign currency into Korean Won due to exchange rate changes would constitute deemed dividends. Furthermore, it implies that these gains may be treated as deemed dividends received from the foreign subsidiary, making the domestic corporation eligible for the dividend received deduction rule as specified in Article 18-4 of the CITL.

## Method for determining large shareholders of shares transferred and relisted from the KONEX market to the KOSDAQ market

The Individual Income Tax Law (IITL) stipulates that capital gains tax should be imposed on the sale or transfer of shares in listed corporations by large shareholders. Under the IITL, the criteria for large shareholders, subject to capital gains tax, include those holding 2% or more for KOSDAQ-listed corporations and 4% or more for KONEX-listed corporations as at the end of the fiscal year immediately preceding the fiscal year in which the share transfer date falls ('immediately preceding year') under Article 157(2) of the Presidential Decree of the IITL. The issue in this case is whether, if a corporation listed on the KONEX (Korea New Exchange) market at the end of the immediately preceding year is transferred to and relisted on the KOSDAQ (Korean Securities Dealers Automated Quotations) market in the year in which the shareholder sells its KOSDAQ-listed shares, the large shareholder's shareholding requirement as of the immediately preceding year should be applied using the KONEX listing criteria (4% or more) or the KOSDAQ listing criteria (2% or more).

The Ministry of Economy and Finance (MOEF) has clarified that the criteria for large shareholders as of the end of the immediately preceding year should be applied based on the shares that are listed at the time of sale (*Financial Taxation Division of the MOEF-45, 2025.1.22*). This interpretation aligns with a previous ruling by the Tax Tribunal, which held that if the transferred shares are KOSDAQ-listed shares, the large shareholder's shareholding requirement for KOSDAQ-listed shares as of the end of the immediately preceding year should be applied regardless of whether the corporation was newly listed on the KOSDAQ market or transferred from the KONEX market to the KOSDAQ market (*Joshim2021jung2758, 2021.7.15*).

**Observation:** In this regard, when a shareholder holds shares in a corporation, which was initially listed on the KONEX market and subsequently transferred to and relisted on the KOSDAQ market, and then sells its KOSDAQ-listed shares, it is necessary to apply the large shareholder's requirement for KOSDAQ-listed shares rather than the KONEX-listed shares, even if the shares were KONEX-listed at the end of the immediately preceding year. Similarly, if shares that were unlisted at the end of the immediately preceding year become listed and then transferred, the large shareholder's requirement for listed shares should be applied to determine whether the transferred shares are subject to capital gains tax for the transfer of shares by large shareholders (Section 94-157-3 of the NTS Practical Guidance to Implement Regulations of the IITL).

## Whether the inheritance tax deduction would apply to a house that has not been cohabited for 10 years or more due to overseas work or study

Under the Inheritance and Gift Tax Law (IGTL), if an heir inherits a house in which the decedent and the heir have continuously cohabited for 10 years or more retroactively from the date of inheritance commencement, the full value of the house, up to a limit of KRW 600 million, is deducted from the taxable value of the inheritance as a cohabitation house inheritance deduction (Article 23-2(1) of the IGTL). The IGTL also stipulates that if cohabitation was not possible due to specific valid reasons such as conscription, study, work circumstances, or treatment and recuperation for one year or more due to illness, it is deemed that cohabitation has continued as prescribed in Article 23-2(2) of the IGTL as well as Article 20-2(2) of the Presidential Decree and Article 9-2 of the Enforcement Rules of the IGTL. The primary issue in this case is whether the



recognized reasons for cohabitation would apply when the heir has not been able to continuously cohabit with the decedent for 10 years or more due to attending a graduate school abroad and working overseas.

The MOEF ruled that overseas work may fall under the recognized reasons for cohabitation, "work circumstances", but overseas study does not fall under the recognized reason for cohabitation, "study". This MOEF ruling appears to be based on the literal interpretation of the tax laws. While there is no explicit provision in the IGTL that excludes overseas work from the recognized reason for cohabitation under Article 9-2(2) of the IGTL Enforcement Rule, the term 'study' is defined as attending a school under the Higher Education Act as articulated in Article 9-2(1) of the IGTL Enforcement Rules. Since a school under the Higher Education Act refers only to domestic educational institutions, attending an overseas educational institution cannot be considered a recognized reason for cohabitation. This interpretation aligns with the precedent Tax Tribunal Decision (*Joshim 2022Seo1899, October 20, 2022*).

**Observation:** When examining whether the decedent and the heir have continuously cohabited for 10 years or more retroactively from the date of inheritance commencement in order to apply the inheritance tax deduction for a cohabitation house, several key factors must be considered: i) If cohabitation was not possible due to work circumstances, such as job changes or transfers, it can be recognized as a reason for cohabitation, regardless of whether the work was domestic or overseas; ii) however, if cohabitation was not possible due to study, it is recognized as a reason for cohabitation only if the study was domestic; and iii) furthermore, even if it is recognized as a reason for cohabitation, the inheritance tax deduction for cohabitation house can only be applied if the cohabitation period, excluding the recognized period, is 10 years or more, as prescribed in Article 23-2(2) of the IGTL.

The content is for general information intended to facilitate understanding of recent court cases and authoritative interpretations. It cannot be used as a substitute for specific advice and you should consult with a tax specialist for specific case.

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