



# Korean Tax Update Samil Commentary

November 15, 2024

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# Tax News

## Government Announces Future Plans to Support Comprehensive Measures for the Semiconductor Ecosystem

During a recent meeting of economic ministers, the government examined the progress of a series of measures for the semiconductor ecosystem announced last June aimed at enhancing the overall competitiveness of the semiconductor sector. The discussion covered major areas such as finance, tax, and fiscal policies as well as future plans. Actions taken and future plans regarding tax support measures are summarized below.

### Actions Taken

**Extension of Tax Credits:** The government has proposed extending the R&D and investment tax credits for national strategic technologies by three additional years as part of the tax reform proposals announced on July 25, 2024. A bill to amend the Special Tax Treatment Control Law (STTCL) to implement these proposals was submitted to the National Assembly on September 2.

- Incremental Investment Tax Credit:** It is proposed to permanently apply a higher rate of additional tax credit for incremental investment (the portion of the current year's investment exceeding the average investment of the previous three years). The tax credit rates for the increased portion of investment for national strategic technologies (4%) and general as well as new growth and source technologies (3%) are proposed to be increased to 10%.

### Future Plans

Along with support for the approval of the proposed amendments to the STTCL by the National Assembly, the government plans to expand the scope of national strategic technologies and the applicable scope of R&D tax credits for these technologies through amendments to the Presidential Decree and Enforcement Rules of the STTCL in March 2025.

**Eligible Technologies:** Based on expert evaluations, advanced semiconductor materials, components, and equipment-related technologies would be added to the existing list of national strategic technologies. This will be achieved by amending the Presidential Decree of the STTCL. Additionally, it will consider adding technologies suggested by relevant industries and government sectors to the list of eligible technologies through expert review councils for each field by December 2024.

**Scope of R&D Tax Credit:** The scope of material costs and personnel expenditures eligible for R&D tax credits for national strategic technologies will be expanded (subject to the amendments of the Presidential Decree and Enforcement Rules of the STTCL).

- Materials costs:** Costs to purchase or lease software, fees to lease or use research and testing facilities, compensation for work-for-hire inventions, and technical information fees (including technical consulting fees) will be added to the costs qualifying for the R&D tax credit.

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- **Personnel expenditures:** National strategic technology R&D tax credits will be applied on a pro rata basis based on actual hours spent on national strategic technology R&D by personnel engaged in general R&D as well.

**Accelerated Depreciation:** The depreciation period for certain R&D purpose machinery and equipment will be shortened to three years from the previous five years, subject to the amendment of the Enforcement Rules of the Corporate Income Tax Law.

## NABO Analysis Report on the 2024 Tax Reform Proposals

The National Assembly Budget Office (NABO) forecasts a KRW19.5 trillion decrease in total tax revenues from 2025 to 2029, based on the "2024 Tax Reform Proposals" submitted by the government. The primary cause is a KRW20.2 trillion decrease in inheritance and gift taxes, driven by changes in tax rates and brackets, reducing revenues by KRW11.7 trillion. Additionally, a projected increase in inheritance deductions for children are expected to result in a further decrease of KRW8.5 trillion. Expansions in child tax credit for income tax will further reduce revenues by KRW2.0 trillion. Conversely, VAT collections will increase by KRW1,574 billion, boosted by measures to reduce the VAT credit rate for credit card spending and decrease the individual consumption tax reduction limit for hybrid vehicles. Other collections of tax items are expected to rise by KRW891.8 billion.

### NABO Estimate: Fiscal Effect of the Government's 2024 Tax Reform Proposal

(Unit: KRW in billions)

Type of tax	2025	2026	2027	2028	2029	Total
Individual income tax	△143.1	△372.1	△434.7	△97.9	△81.8	△1,129.6
Corporate income tax	1,525.8	△231.6	△408.2	76.6	△1,618.8	△656.2
VAT	253.5	386.3	332.2	305.9	296.3	1,574.2
Inheritance & gift taxes	△2,615.4	△4,392.7	△4,392.7	△4,392.7	△4,392.7	△20,186.2
Other	87.1	222.1	295.8	141.8	145.0	891.8
<b>Total</b>	<b>△892.1</b>	<b>△4,388.0</b>	<b>△4,607.6</b>	<b>△3,966.3</b>	<b>△5,652.0</b>	<b>△19,506.0</b>

## MOEF Hosts an Expert Forum for Estate Acquisition Tax

The Ministry of Economy and Finance (MOEF) is considering overhauling the current inheritance tax system and recently hosted a forum of experts to discuss converting to estate acquisition taxation on inherited properties by individual legatees. Organized by the Tax Law Association, the event aimed to seek comments on the reform. The chief of the MOEF Tax and Customs Office stated that they were preparing to shift from the current method, which taxes the entire inherited property as a whole, to a new method. The contemplated new method, adopted by many OECD countries, seeks to impose estate acquisition tax on inherited properties by individual legatees. He highlighted that this approach is considered more equitable and effective in reducing wealth concentration. The Ministry plans to continue gathering comments from various sectors, including tax experts, to develop a comprehensive reform plan. They aim to submit the legislative proposal to the National Assembly by the first half of next year.

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## SMEs Expanding Investment and Creating Jobs to Be Excluded from NTS Audit Targets

The National Tax Service (NTS) has announced a new initiative to support small and medium-sized enterprises (SMEs) that are actively expanding their investments or creating jobs. These SMEs will be excluded from the selection of regular tax audit targets concerning corporate or comprehensive income taxes for the fiscal year 2023 as summarized below.

### SMEs Expanding Investment

**Eligibility Criteria:** SMEs with annual revenue of KRW 150 billion or less as per the STTCL, excluding those in the grace period for maintaining SME status, which plan to increase investment by 5% to 20% or more in 2025 compared to 2024 and submit an investment expansion plan between November 1, 2024, and December 2, 2024, and ensure the plan is implemented.

- **Corporations:** For corporations with total assets of at least KRW 200 billion and those providing professional personal services, annual revenue must be less than KRW 50 billion.
- **Sole proprietors:** For professional service providers, annual revenue must be less than KRW 50 billion.

#### Minimum Investment Growth Rate by Annual Revenue

Annual revenue for FY2023	Less than KRW50 billion	KRW50 billion or more ~ KRW150 billion or less
General SMEs	10% or more	20% or more
SMEs investing in regions other than designated metropolitan areas	5% or more	15% or more

- **Investment in regions other than designated metropolitan areas:** The above criteria will be relaxed by 5% points for investments in business locations outside metropolitan areas such as Seoul, Incheon, and Gyeonggi Province. If 80% or more of the total investment is made in regions other than designated metropolitan areas, companies are considered as investing in regions other than designated metropolitan areas.
- **Exclusions:** This initiative shall not apply to sole proprietors who are subject to the confirmation of compliant tax filing but fail to submit a compliant tax filing certificate as well as business owners with tax in arrears, committing tax offenses, or engaging in fraudulent accounting.

### SMEs Creating Jobs

**Eligibility Criteria:** SMEs with annual revenue of KRW 150 billion or less as per the STTCL, excluding those in the grace period for maintaining an SME status, which should plan to increase the number of full-time employees by 2% to 3% (net increase of at least one employee) in 2025 compared to 2024, submit a job creation plan between November 1, 2024, and December 2, 2024, and ensure the plan is implemented.

- **Corporations:** For corporations with total assets of at least KRW 200 billion and those providing professional personal services, annual revenue must be less than KRW 50 billion.
- **Sole Proprietors:** Professional service providers must have annual revenue of less than KRW50 billion.

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### Job Creation Rate by Annual Revenue

Annual revenue for FY2023	Less than KRW50 billion	KRW50 billion or more to KRW150 billion or less
Minimum job creation rate	2% or more	3% or more

**Exclusions:** This initiative shall not apply to business owners who fail to pay wages and compensation as disclosed by the Ministry of Employment and Labor under Article 43-2 of the Labor Standards Act as well as businesses with tax in arrears, committing tax offenses, or engaging in fraudulent accounting. Additionally, it shall not apply to:

- Corporations that previously submitted a plan but fail to meet the minimum requirement of a net increase of one full-time employee
- Sole proprietors who are subject to the confirmation of compliant tax filing but fail to submit the compliant tax filing certificate.

### Government to Suspend Tax Audits for SMEs Promoting a Culture of Work-Life Balance for Two Years

Starting from January 2025, the government will implement a new policy aimed at alleviating the burdens of SMEs that have excelled in promoting a culture of work-life balance. This initiative will suspend regular corporate tax audits for qualifying SMEs for a period of two years, beginning from January 2025. The policy targets approximately 4,300 companies, including around 4,110 companies recognized as family-friendly enterprises and about 200 companies noted for their outstanding corporate culture for work-life balance. SMEs selected for regular tax audits by the NTS will have the opportunity to defer their audits for up to two years from the scheduled audit start date. Before the end of the tax audit deferral period of up to two years, the government will conduct a review to determine whether to further extend the deferral period based on factors such as taxpayer satisfaction and the overall effectiveness of the policy.

### National Tax Collections Amount to KRW 255.3 Trillion for the First Nine Months of This Year, a KRW 11.3 Trillion Decline from the Previous Year

National tax collections for the first nine months of this year amounted to KRW 255.3 trillion, marking a decrease of KRW 11.3 trillion compared to the same period last year. The primary reason for this decline is a significant reduction in corporate tax revenue, which fell by KRW 17.4 trillion, reflecting weak corporate performance last year. Despite the overall decline, individual income tax collection saw a slight increase of KRW 0.4 trillion compared to the previous year. This increase was driven by higher interest rates which led to an increase in interest income tax and a rise in employment and wages which resulted in higher payroll income tax collections. However, these gains were partially offset by a decline in the collection of capital gains tax and global income tax. On the other hand, VAT collection increased by KRW 5.7 trillion due to robust consumption and reduced VAT refunds.

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## Eight Administrative Districts Designated as Venture Business Development and Promotion Zones for Local Taxes Reduction

The Ministry of SMEs and Startups has recently designated eight administrative districts as venture business development and promotion zones, including Daehwa-dong, Janghang-dong, and Siksa-dong in Goyang City, Gyeonggi Province, as well as Yeongcheon-dong, Banggyo-dong, and Seokwoo-dong in Hwaseong City in the same province. This designation allows venture businesses within these zones to benefit from a maximum 50% reduction in acquisition and property taxes until the end of 2025, as stipulated in Article 58(4) of the STTCL. In addition to tax reductions, businesses in these zones are exempt from five specific charges including the development charge under the Restitution of Development Gains Act and the charge for farmland preservation. Furthermore, these businesses can access preferential financing for relocation to the designated zones.

# Changes in Tax Laws

## Amended Presidential Decree of the Corporate Income Tax Law

### Background of Amendment and Key Points

Under the amended Presidential Decree of the Corporate Income Tax Law (CITL), a corporation shall be exempt from additional corporate tax (10%) on capital gains from the transfer of land to public rental housing construction companies until December 2027, a three-year extension from December 2024. The latest amendment aims to facilitate the supply of public rental housing. (Proclaimed and enforced on November 12, 2024)

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

### Background of Amendment and Key Points

To support the growth of SMEs, the amended Presidential Decree of the Special Tax Treatment Control Law extends the grace period for companies which came to exceed the criterion of SME in scale. Previously, the grace period was the taxable year in which the reason first occurred and the following three taxable years. This has now been extended from three taxable years to five taxable years. In the case where the company is listed on the Korea Exchange or KOSDAQ as of the end of the taxable year that includes the day which is five years from the end of the taxable year in which the reason first occurred, the grace period is extended to up to seven taxable years. (Proclaimed and enforced on November 12, 2024)

## Amended Presidential Decree of the Individual Income Tax Law

### Background of Amendment and Key Points

The Amended Presidential Decree of the Individual Income Tax Law aims to enhance tax support for married couples. Couples acquiring a second home upon marriage will now be treated as a household owning a single home for capital gains tax purposes for 10 years, up from the previous five years. The special capital gains tax treatment for qualifying housing under a prescribed mutual benefit rental arrangement has been extended until December 2026, a two-year extension from the previous deadline. Additionally, the period during which new small non-apartment houses are excluded from the number of houses owned for capital gains tax purposes has been extended by two years, from December 2025 to December 2027. (Proclaimed and enforced on November 12, 2024)

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## Amended Presidential Decree of the VAT Law

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

To enhance employee welfare, an amendment has been made to the provision of goods by employers to their employees on special occasions such as New Year's Day, Chuseok, company anniversaries, birthdays, and similar events, which were previously limited to a combined total of KRW100,000 per year. The amended Presidential Decree increases the allowable provision of goods to KRW100,000 per year for each individual occasion. (Proclaimed and enforced on November 12, 2024)

## Amended Presidential Decree of Comprehensive Real Estate Holding Tax Law

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

The amended Presidential Decree of the Comprehensive Real Estate Holding Tax Law introduces several changes aimed at resolving low fertility rates and encouraging marriages through housing assistance. One amendment extends the period during which newly married couples acquiring a second home are treated as owning a single home for comprehensive real estate holding tax purposes from five years to ten years. Additionally, the threshold for the price of public rental housing purchased by the state-run Korea Land and Housing Corporation, which is excluded from the comprehensive real estate holding tax base, has been increased from KRW 600 million to KRW 900 million. This adjustment applies to contracts signed under the condition that the Korea Land and Housing Corporation guarantees the purchase, and the construction commencement is reported by December 31, 2025. Furthermore, new small non-apartment houses will not be counted in the number of houses owned for comprehensive real estate holding tax purposes for an additional two years until December 2027. (Proclaimed and enforced on November 12, 2024)

## Amended Presidential Decree of the Individual Consumption Tax Law

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

To alleviate the public burden from high oil prices, the amended Presidential Decree extends the temporary reduction in the individual consumption tax rate for butane among liquefied petroleum gas products by an additional two months from December 31, 2024. In light of the recent decline in oil prices, it is amended to narrow the fuel tax cuts to KRW 212 per kilogram. (Proclaimed and enforced on October 31, 2024)

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## Amended Presidential Decree of the Transport, Energy and Environment Tax Law

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

To ease the public burden of high oil prices, the amended Presidential Decree extends the temporary reduction in flexible tax rates for gasoline, diesel, and similar alternative fuels by an additional two months through December 31, 2024. In light of the recent decline in fuel prices, the amended Decree aims to narrow the reductions in flexible tax rates to KRW 450 per liter for gasoline and similar alternative fuels, and to KRW 289 per liter for diesel and similar alternative fuels. (Proclaimed and enforced on October 31, 2024)

## Amended Enforcement Rules of the CITL

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

To help secure financial resources for the Korea Inclusive Finance Agency, which implements financial support projects for low-income households, the amended enforcement rules exclude income arising from the Agency's small loan business from the corporate tax base. Additionally, the useful life of buildings and structures will be applied differentially based on their structural characteristics. This change aims to better reflect the actual aging of buildings and structures in the calculation of depreciation expenses. (Ordinance of the MOEF No.1085 proclaimed on November 11, 2024)

# Rulings Update

## Meaning of "book value" in applying the book value threshold provision to the valuation of investment shares held by an unlisted company

In calculating the value of shares in an unlisted company under the Inheritance and Gift Tax Law (IGTL), the net asset value of the unlisted company being valued shall be the value of the unlisted company's assets as determined based on the IGTL (Articles 60 to 66 of the IGTL) as of the valuation date. In this case, where the value of the unlisted company's assets calculated using the supplementary valuation method under the IGTL (Article 60(3) and Article 63) (referred to as the "supplementary valuation amount") is less than the book value of the assets (defined as the acquisition price minus depreciation cost), it is stipulated that the book value, rather than the supplementary valuation amount, shall be used for the assets unless there is a justifiable reason (Article 55 (1) of the Presidential Decree of the IGTL, so-called the "book value threshold provision"). The primary issue in this ruling is whether the meaning of "book value", which is compared with the supplementary valuation amount of the investment shares held by the unlisted company, should refer to "accounting book value" or the "acquisition cost" (acquisition price minus depreciation cost) of the investment shares when applying the book value threshold provision in the valuation of unlisted company shares.

Regarding this, the plaintiff argued that the definition of book value as "the acquisition price minus depreciation cost" should be limited to depreciable assets. For non-depreciable assets like investment shares, the "accounting book value," which is more consistent with market value, should be used instead of the "acquisition cost." However, the Supreme Court decided that it would be reasonable to regard "the acquisition price minus depreciation cost" (i.e. acquisition cost) as the book value for investment shares as well, considering that the IGTL does not limit the application of the book value threshold provision to depreciable assets. (*Daebeop2024du41069, 2024. 9.12*)

**Observation:** In line with this Supreme Court ruling, the NTS has clarified that the book value under the book value threshold provision of the IGTL should be "the acquisition price minus depreciation cost" (*Advance Ruling-2019-BeobryeonghaeseokJaesan-0276, 2019. 6.21*). The NTS has deleted its previous interpretation, which had used the "accounting book value," thereby resolving the controversy over the application of the book value threshold provision (NTS Tax Law Interpretation Revision on June 20, 2019). Consequently, in valuing investment shares held by unlisted companies, it would be crucial to ensure that if the net asset value calculated using the supplementary valuation method is lower than the "acquisition cost," the "acquisition cost" should be applied for the valuation of investment shares unless there is a justifiable reason for the supplementary valuation amount to be less than the book value.

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## Whether an acquisition tax reduction for real estate acquired for logistics complex development would be recaptured if construction starts within one year

Article 71(1) of the Special Treatment Control Law for Local Taxes ('tax reduction provision at issue') provides a 35% reduction in acquisition tax for real estate acquired by a developer of logistics complex development projects. However, the law also includes a 'recapture provision' under Article 178(1) stipulating that the reduced or exempted portion of the acquisition tax must be recaptured if the real estate is not used directly for the intended purpose within one year from the date of acquisition without a justifiable reason, or if the real estate is sold, donated, or used for any other purpose within two years of direct use for the intended purpose. A recent case involves a developer who commenced construction within one year of acquiring the real estate but did not obtain approval for the completion of the complex within that year. The central issue in this case is whether the act of commencing construction can be considered direct use of the real estate within one year from the acquisition, thereby not subjecting the taxpayer to the recapture of the acquisition tax reduction.

An existing interpretation by the Ministry of Interior and Safety considered that the act of commencing construction is merely a preparatory activity for the direct use of the land and that if the commencement of construction is regarded as the start date of direct use and construction begins within one year from the date of acquisition but the land is sold after two years, the reduction in acquisition tax cannot be recaptured. Therefore, the Ministry ruled that commencing construction cannot be considered a direct use. (Local Tax Relief Division-510, 2023.10.30) However, the Tax Tribunal determined that the direct use of real estate for the development of a logistics complex means "developing a logistics complex". Thus, the Tribunal decided that where construction of the logistics complex begins within one year of acquiring the real estate, the real estate is considered as being directly used for the development of the logistics complex, and the reason for recapture does not arise accordingly. (*Joshim2023i4190,2024.8.13*)

**Observation:** This Tribunal ruling appears to take the position that where the developer of the logistics complex development project commences construction within one year of acquiring the real estate for the development of the logistics complex, even if the logistics complex is not completed within that year, the reduced acquisition tax cannot be recaptured under the tax reduction provision at issue. However, it is noteworthy that a bill to amend the Special Tax Treatment Control Law for Local Taxes (announced on August 13, 2024) proposes new reasons for recapture, such as if the approval for the completion is not obtained within three years from the acquisition date of real estate to develop a logistics complex without a justifiable reason, or if it is sold or donated within two years of direct use for the intended purpose. Therefore, if the proposed amendment is enacted, the reduction in acquisition tax can be recaptured if the construction of the logistics complex is not completed within three years from the acquisition date without a justifiable reason.

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## Whether a tax credit for the acquisition of technology-innovative shares is available if the acquired company is granted a grace period for inclusion in the business group

Where a domestic company acquires shares in a qualifying technology-innovative SME, the Special Tax Treatment Control Law (STTCL) allows the domestic acquiring company to claim a 10% tax credit on the value amount of the acquired technology prescribed by the Presidential Decree out of the share acquisition amount if certain requirements are met. One of the key requirements is that the existing controlling shareholders of the acquired company must not be controlling shareholders of the acquired company after transferring shares to the acquiring company until the end of the fiscal year in which a prescribed shareholding requirement is met according to Article 12-4(1)(4) of the STTCL (the 'requirement for change of controlling shareholders'). The scope of related parties considered as controlling shareholders includes other affiliated companies within the business group and the executives of those affiliated companies among others (*Article 43(3) and (7), Article (2)(8) of the Presidential Decree of the Corporate Income Tax Law*). If the existing CEO of the acquired company continues to hold shares of the acquired company, which has been included in the business group of the acquiring company and continues to serve as the CEO, the CEO, along with the acquiring company, is considered a controlling shareholder of the acquired company. Consequently, the acquiring company does not meet the requirement for change of controlling shareholders, and would not be eligible for the tax credit for the acquisition of shares in technology-innovative SME based on existing authoritative interpretations (*Corporate Tax Division of the MOEF-296, 2021.6.22*) and court decisions (*Joshim2022jung0014, 20225.24*). The main issue in this case is whether the acquiring company would be eligible for the tax credit if the acquired company is granted a grace period for inclusion in the business group of the acquiring company under relevant regulations while the CEO of the acquired company continues to hold some shares and remains in office.

Authoritative interpretations indicate that if the acquired company has received a grace period notification for inclusion in the business group under the Fair Trade Act, even if the existing CEO of the acquired company continues to hold some shares and remains in office, the acquired company and its existing CEO would not be considered as an affiliated company or an executive in the business group to which the acquiring company belongs to. As such, the existing CEO of the acquired company is not deemed a controlling shareholder of the acquired company, and the acquiring company can be eligible for the tax credit for the acquisition of shares in technology-innovative SME. (*Corporate Tax Division of the MOEF-463, 2024. 8. 19, Advance Ruling-2023-Boebyubeobin-0184, 2024. 8. 28.*)

**Observation:** Therefore, if the acquired company has received a grace period notification for inclusion in the business group the Fair Trade Commission, even if the existing controlling shareholder of the acquired company continues to hold some shares or remains in office as an executive, according to this authoritative interpretation, the acquiring company can be eligible for the tax credit for the acquisition of shares in technology-innovative SME.

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## Whether the heavy tax rate on capital gains for multi-homeowners would apply to the sale of a house inherited during the special period for basic tax rate

The supplementary provision of the Individual Income Tax Law stipulates that to revitalize the real estate market, which had been depressed by the global financial crisis, the heavy tax rate on capital gains for multi-homeowners would not apply, and instead the basic tax rate would be applied to the sale of houses acquired during the period from March 16, 2009 to December 31, 2012 ("special period for basic tax rate"). This case involves a multi-homeowner (taxpayer) who inherited a membership right to move into a cooperative housing unit due to the death of the taxpayer's spouse during the special period for basic tax rate and sold the house upon construction after the special period ended ("the house at issue"). The key issue is whether the house at issue would be treated as being acquired during the special period for basic tax rate and thus, the taxpayer would not be subject to the heavy tax rate on capital gains and is instead subject to the basic tax rate according to the supplementary provision.

Regarding this, the tax authorities considered that the legislative intent of this supplementary provision was to stimulate real estate demand to boost the economy, and existing authoritative interpretations (*Real Estate Transaction Management Division-236, February 11, 2010; Real Estate Transaction Management Division-331, March 3, 2010*) stating that houses acquired through inheritance or gift during the special period for basic tax rate would be excluded from the scope of the supplementary provision. As such, the tax authorities argued that it would be reasonable to apply the heavy tax rate on capital gains from the sale of the house at issue, which the taxpayer inherited as a membership right to move into the house from a member of the same household. However, the Tax Tribunal decided that, based on the wording of the supplementary provision, there is only a restriction on the acquisition period and no separate restriction on the cause of acquisition, and thus, it would be consistent with the principle of tax legality to apply the basic tax rate, rather than the heavy tax rate, to the sale of the house acquired through inheritance under the supplementary provision. (*Joshim2024seo2629, 2024.9.3.*)

**Observation:** This decision implies that, contrary to previous authoritative interpretations, even if a multi-homeowner transfers a house acquired without consideration (such as through inheritance or gift) after the special period for basic tax rate (March 16, 2009, to December 31, 2012) has ended, the basic tax rate, instead of the heavy tax rate on capital gains for multi-homeowners, can be applied. This implication is based on the wording of the supplementary provision, which does not restrict the cause of acquisition, even if it may not align with the legislative intent of the provision to encourage real estate transactions.

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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.

# Contacts

## Corporate Tax

### Michael Kim

+82-2-709-0707

michael.kim@pwc.com

### Chang-Ho Jo

+82-2-3781-3264

changho.jo@pwc.com

### Baek-Young Seo

+82-2-709-0905

baek-young.seo@pwc.com

### Seung-Ryul Lee

+82-2-3781-2335

seung-ryul.lee@pwc.com

### Yun-Jung Yang

+82-2-3781-9278

yunjung.yang@pwc.com

### Young-Ok Kim

+82-2-709-7902

young-ok.kim@pwc.com

### Kyu-Young Han

+82-2-3781-3105

kyu-young.han@pwc.com

### Ji-Young Yoon

+82-2-3781-9958

jiyoung.yoon@pwc.com

### Il-Gyu Cha

+82-2-3781-3173

il-gyu.cha@pwc.com

### Robert Browell

+82-2-709-8896

robert.browell@pwc.com

### Jeong-Eun You

+82-2-709-8911

jeong-eun.you@pwc.com

### Kyoung-Soon Lee

+82-2-3781-9982

kyoungsoon.lee@pwc.com

## Transfer Pricing

### Won-Yeob Chon

+82-2-3781-2599

won-yeob.chon@pwc.com

### Young-Joo Kim

+82-2-709-4098

young-joo.kim@pwc.com

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