Korean Tax Update

Samil Commentary

June 15, 2022

Bills to Amend Tax Laws to Implement Proposed Measures for Emergency Stabilization of Livelihood

The government convened its first cabinet meeting to discuss economic matters with a top priority placed on people's livelihood. In the meeting, so-called 'projects for emergency stabilization of livelihood' were prepared with a focus on the three areas of food, living expenses and housing. Subsequent to the meeting, the Ministry of Economy and Finance announced on June 7, 2022 the bills to amend the Presidential Decree of the Individual Consumption Law, and the Presidential Decree and Enforcement Rules of the Value Added Tax (VAT) Law, seeking public comments on the bills.

Specifically, to help ease cost pressure on food manufacturers and restaurant businesses, the Presidential Decree and the Enforcement Rules of the VAT Law will be amended to: 1) provide a 10% point increase in the deduction limit of deemed input VAT that applies to VAT-exempt agricultural products through December 31, 2023; 2) apply VAT exemptions to certain food products through the end of 2023, including parboiled vegetables, kimchi, pickled radish, salted seafood, soy sauce marinated crab, bean curd, fermented soybeans, bean paste and red pepper paste, regardless of whether they are packaged; and 3) apply VAT exemption for imports of coffee or cocoa beans, excluding roasted beans, through the

end of 2023. Also, the Presidential Decree of the Individual Consumption Law will be amended to further allow a temporary 30% reduction of the individual consumption tax rate on cars (i.e., from the rate of 5% to 3.5%) for a six-month extended period through December 31, 2022, which otherwise would sunset on June 30, 2022. The temporary reduction in the individual consumption tax rate on cars is intended to alleviate the burden of transportation costs and boost car sales, as well as domestic consumption.

OECD Projects Korea's Economic Growth at 2.7% in 2022

In its latest economic outlook released on June 8, 2022, the Organization for Economic Cooperation and Development (OECD) predicted that global economic recovery would slow down and inflation would significantly rise due to the prolonged war in Ukraine and the Chinese lockdown. The OECD outlook indicates that Korean economic growth would be 2.7% and 2.5% in 2022 and 2023, respectively, and the inflation rate would reach 4.8% and 3.8% in 2022 and 2023, respectively. Private sector consumption is predicted to recover due to the lifting of social distancing restrictions and the effects of the supplementary budget, while corporate investment is expected to show a solid recovery, boosted by large-scale investment in core industrial sectors. The OECD warned of risks including the worsening impact of the war in Ukraine on the economic and social crisis, broadened and prolonged inflation pressure and insolvency in financial markets and emerging market economies that might be triggered by a substantial tightening of global financial conditions. For Korea's future policy challenges, it recommended that the monetary policy should aim to manage and stabilize inflationary pressures and that financial support should be aimed at the most vulnerable. It also underlined the country's structural reforms and measures to bolster the resilience of essential supply chains and energy security.

Custom Audits to be Suspended Temporarily for Companies Creating Jobs, Etc.

The Korea Customs Service (KCS) announced that it would postpone audits temporarily for a period of one year for qualifying companies, including small and medium-size enterprises (SME), which must meet certain criteria for job creation or retention. The job creation criteria will be 1%, 2% and 3% increase in the number of jobs to be created as per the qualifying companies' plans, for those with annual imports of less than USD10 million, from USD10 million to USD50 million and more than USD50 million to UDS100 million, respectively. The prerequisite for postponement is for a qualifying company to have annual imports of USD100 million or less during 2021. To postpone a customs audit, an application must be filed with the KCS no later than May 31, 2022.

In addition, the temporary relief from customs audits will also be extended to the 12 categories of companies having annual imports of USD100 million or less during 2021 as follows: companies (including SMEs) acknowledged for their commitment towards: 1) quality jobs, 2) employment of disabled persons and 3) veterans, or 4) recognized for good customs compliance; SMEs which are 5) exporters and importers of low-carbon products, 6) specialized in designated root technologies, 7) recognized for technology innovation, 8) awarded a prize for excellent export performance, or 9) newly incorporated in 2021; 10) tenant corporations operating in *Gaesung* Industrial Complex; or companies located in specially designated areas affected by 11) industrial crisis or 12) extraordinary disaster.

The KCS audits will be suspended for a period of one year temporarily for those 12 categories of companies, regardless of whether they apply for the postponement of a customs audit.

Government Announces a Draft Amendment to the Presidential Decree and Enforcement Rules of the Customs Act for the implementation of FTA

The government announced a bill to amend the Presidential Decree and Enforcement Rules of the Customs Act for the Implementation of Free Trade Agreements (FTA) to invite public comments (from May 20 through June 3, 2022). The bill includes changes to reflect the procedures for implementing a flexible tariff structure such as emergency tariff and countervailing duty along with the agreed preferential tariff treatment for Cambodian exports to Korea as the Korea-Cambodia Free Trade Agreement (FTA) has taken into effect recently. Also, the bill aims to incorporate in domestic legislation changes with regard to certificates of origin under three existing trade agreements including the Korea-China FTA, the Korea-Israel FTA and the Regional Comprehensive Economic Partnership (RCEP). In addition, it is proposed to supplement rules so that the Customs Service is allowed to examine whether the preferential tariff treatment would apply to specific products imported into Korea before the import declaration is accepted.

Rulings Update

Whether the penalty for incorrect refund can be imposed on the tax refunded per an amended tax return due to wrongful accounting where it is recaptured

According to the Basic National Tax Law (BNTL), where a taxpayer is incorrectly refunded more than the tax amount to be refunded, a penalty for incorrect refund (currently, 'penalty for late payment') should be imposed (Articles 47-7(1) and 48(1) of the old BNTL which were effective prior to the amendment of December 19, 2017).

Meanwhile, Article 58-3(1) of the Corporate Income Tax Law (CITL) (the 'provision at issue') provides that where a domestic company has corrected its overpaid tax through the filing of an amended tax return for a refund claim on the grounds that its tax base and tax amount were overstated and overpaid due to its wrongful accounting which meet certain conditions stipulated in this Article, the overpaid tax shall not be refunded immediately but shall be deducted from corporate income tax due for the fiscal year in which the tax amount is corrected and in subsequent fiscal years, to the extent of 20% of the overpaid tax for the fiscal year.

In this case, a taxpayer had overstated its revenue for FY2016 and understated its revenue for FY2017 by applying the incorrect timing for the recognition of construction revenue. Later it disclosed the amended audit reports with corrections of revenues for FY2016 and FY2017 based on the audit results. Subsequently, the taxpayer filed an amended tax return for refund claim for FY2016 while it filed an amended tax return for additional tax payment for FY2017. The tax authorities made a refund of the overpaid tax amount for FY2016 (the

'refund amount at issue') as per the taxpayer's amended tax return filed. Later, the tax authorities were subject to an audit by the Board of Audit and Inspection (BAI). The BAI found that the refund amount at issue falls in wrongful accounting under the provision at issue of the CITL and thus the refund amount at issue should have been not refunded immediately. Rather it should have been deducted within the limit of 20% of the overpaid tax for the fiscal year in which the tax amount was corrected and the refund amount at issue should be recaptured. In response to the BAI's instruction based on such findings, the tax authorities issued a notice for the reassessment of the refund amount at issue and the imposition of a penalty for incorrect refund to the taxpayer.

The issue in this case was whether the penalty for incorrect refund could be exempt for the taxpayer on the basis that there was a justifiable cause for the taxpayer failing to fulfill its obligation for the deduction of the overpaid tax within the 20% limit for a fiscal year (because the taxpayer relied on the tax authorities' initial judgment on the immediate refund of overpaid tax) where the taxpayer stated a 'refund of tax' on the amended tax return for the overpaid tax due to wrongful accounting and received a full refund of overpaid tax as per its statement from the tax authorities immediately, but later the refunded tax was reassessed.

Regarding this, the Tax Tribunal decided in favor of the taxpayer based on the following grounds: i) Article 58-3(1) of the CITL provides that where a tax amount is corrected down as per an amended tax return due to wrongful accounting, the overpaid tax amount should not be refunded, but should be deducted from corporate income tax for the fiscal year in which the tax amount is corrected and in subsequent years; ii) based on Article 58-3(1) of the CITL the tax authorities should not have refunded the overpaid tax immediately but it was clear that the tax authorities mistakenly did so; and iii) therefore, it would be reasonable to view that there was a justifiable reason for not attributing a cause for incorrect refund to the taxpayer and the tax authorities' assessment of the penalty for incorrect refund to the taxpayer should be revoked accordingly. *(Joshim2022Seo1579, 2022. 4. 20.)*

The Tribunal's decision is meaningful in that it acknowledged that even if a taxpayer actually received a refund by stating the overpaid tax amount as a refund when filing an amended tax return due to wrongful accounting, a cause for such an incorrect refund cannot be attributable to the taxpayer. In addition, this decision is in line with the Tribunal's earlier decisions that a penalty for non-payment or underpayment of tax cannot be assessed if the tax authorities made a refund according to its own judgment in respect of a taxpayer's refund claim and assessed additionally an amount of tax equal to the refund amount. *(Joshim2021Jung2919, 2021. 9. 14., Joshim2020Bu2016, 2020. 10. 13. Etc.)* The series of the Tribunal's decisions can be considered in similar cases dealing with penalties for non-payment or underpayment as well as incorrect refund penalties.

Whether gift tax would be imposed on gains from the listing of shares within five years from the acquisition of the shares upon exercising stock options

Article 41-3 (i.e., Gift of Gains from Listing of Shares, etc.) of the Inheritance and Gift Tax Law (IGTL) applies where a related party (e.g., employees) of the largest shareholder, etc. of a company as defined in this Article is gifted or acquires shares of the company. According to this Article, where the company's share value has increased following the

listing of the shares on the stock exchange within five years from the date of gift or acquisition of such shares, and the related party owning the shares previously gifted or acquired has earned gains from the increased value of listed shares that exceeds the gift tax base or the acquisition price of the shares, such gains (as computed pursuant to the IGTL) shall be deemed as the value of gifted property of the related party and be subject to gift tax.

A recent authoritative interpretation of the National Tax Service (NTS) concerns a question as to whether gift tax would be imposed to the executives and employees of a domestic company who have exercised their stock options to acquire shares of the domestic company where the shares of the company are listed on the stock exchange within five years from the date of such acquisition.

The NTS has replied that the foregoing provision of the IGTL would not be applicable where shares acquired by a domestic company's executives and employees upon exercising their stock options granted by the company are listed on the stock exchange within five years from the date of acquisition. *(Seomyeon-2019-Beobgyujaesan-4667, 2022. 1. 24.)*

This interpretation is considered meaningful in that it is clearly stipulates that where an unlisted company goes public, the gift tax rule under the IGTL shall not apply to gains from the listing of unlisted shares which have been acquired upon exercising stock options granted by the unlisted company. In addition, where new shares are issued upon the exercise of stock options granted by a company, the NTS noted in another interpretation that the deemed gift tax provision under Article 39 of the IGTL (i.e., Gift of Profits from Capital Increase) cannot be applicable. These interpretations may be considered together in reviewing potential deemed gift tax liabilities in relation to stock options. (*Seomyeon Online Consulting 4 Team-55, 2008. 1. 9*.)

A short YouTube video on one of the topics in the latest issue is available on the Samil PwC YouTube Channel link. →PwC Korea YouTube Channel

사실과 다른 회계처리로 인한
경정청구로 환급한 세액을
추징하는 경우
환급불성실가산세 부과 여부

Contacts

International Tax Services

Alex Joong-Hyun Lee 709-0598
alex.lee@pwc.com

Sang-Do Lee 709-0288
sang-do.lee@pwc.com

Sang-Woon Kim 709-0789
sang-woon.kim@pwc.com

Dong-bok Lee 709-4768
dongbok.lee@pwc.com

Chong-Man Chung 709-4767
chong-man.chung@pwc.com

Il-Gyu Cha 3781-3173
il-gyu.cha@pwc.com

Hyun-Chang Shin 709-7904
hyun-chang.shin@pwc.com

Youngsuk Noh 709-0877
yongsuk.noh@pwc.com

Chang-Ho Jo 3781-3264
changho.jo@pwc.com

Nam-Gyo Oh 709-4754
nam-gyo.oh@pwc.com

Baek-Young Seo 709-0905
baek-young.seo@pwc.com

Seong-moo Ryu 709-4761
seongmoo.ryu@pwc.com

Young-Ok Kim 709-7902
young-ok.kim@pwc.com

Eung-Jeon Lee 3781-2309
eung-jeon.lee@pwc.com

JongWoo Park 3781-0181
jongwoo.tice.park@pwc.com

Robert Browell 709-8896
robert.browell@pwc.com

Tax Managed Services

Soo-A Shim 3781-3113
sooa.shim@pwc.com

People and Organisation

Ju-Hee Park 3781-2387
Ju-hee_1.park@pwc.com

Domestic Tax Services

Yeon-Gwan Oh 709-0342
yeon-gwan.oh@pwc.com

Young-Sin Lee 709-4756
young-sin.lee@pwc.com

Jin-Ho Kim 709-0661
jin-ho.kim@pwc.com

Bok-Suk Jung 709-0914
boksuk.jung@pwc.com

Seungdo Na 709-4068
seungdo.na@pwc.com

Hyungsuk Nam 709-0382
hyungsuk.nam@pwc.com

Sung-Wook Cho 709-8184
sung-wook.fs1.cho@pwc.com

Sun-Heung Jung 709-0937
sun-heung.jung@pwc.com

Dong-Jin Nam 709-0656
dong-jin.nam@pwc.com

Kwang-Soo Kim 709-4055
kwang.soo.kim@pwc.com

Yoon-Sup Shin 709-0906
yoon-sup.shin@pwc.com

Byung-Oh Sun 3781-9002
byung-oh.sun@pwc.com

Hyeonjun Jang 709-4004
hyeonjun.jang@pwc.com

Yu-Chul Choi 3781-9202
yu-chul.choi@pwc.com

Yun-Je Heo 709-0686
yun-je.heo@pwc.com

Chang-Seok Sung 3781-9011
chang-seok.sung@pwc.com

Youn-Jung Seo 3781-9957
youn-jung.seo@pwc.com

Haejung Oh 3781-9347
haejung.oh@pwc.com

Byungkuk Jin 709-4077
byungkuk.jin@pwc.com

Chang-Ki Hong 3781-9489
chang-ki.hong@pwc.com

Financial Tax Services

Taejin Park 709-8833
taejin.park@pwc.com

Hoon Jung 709-3383
hoon.gp6.jung@pwc.com

Soo-Yun Park 709-4088
soo-yun.park@pwc.com

M&A Tax

Min-Soo Jung 709-0638
minsoo.jung@pwc.com

Ki-Un Park 3781-9187
ki-un.park@pwc.com

Private Equity Tax Service

Jeong-Soo Tak 3781-1481
Jeongsoo.tak@pwc.com

Gyung-Ho Kim 709-7975
gyungho1.kim@pwc.com

Jong-Hyung Lee 709-8185
Jonghyung.lee@pwc.com

Inheritance & Gift Tax Services

Hyun-Jong Lee 709-6459
hyun-jong.lee@pwc.com

Yong Lee 3781-9025
yong.lee@pwc.com

Woon-Kyu Kim 3781-9304
woon-kyu.kim@pwc.com

Local Tax Advisory

Young-Jae Cho 709-0932
young-jae.cho@pwc.com

In-Byung Yang 3781-3265
in-byoung.yang@pwc.com

Nonprofit Corporation Service Center

YoungSun Pyun 3781-9684
youngsun.pyun@pwc.com

Transfer Pricing & International Trade

Henry An 3781-2594
henry.an@pwc.com

Won-Yeob Chon 3781-2599
won-yeob.chon@pwc.com

Junghwan Cho 709-8895
junghwan.cho@pwc.com

Young-Joo Kim 709-4098
young-joo.kim@pwc.com

Chan-kyu Kim 709-6415
chan-kyu.kim@pwc.com

Outbound planning and structuring

Michael Kim 709-0707
michael.kim@pwc.com

Hong-Hyeon kim 709-3320
Hong-hyeon.kim@pwc.com

Dong-Youl Lee 3781-9812
dong-youl.lee@pwc.com

Tax health check and tax audit assistance

Sung-Young Kim 709-4752
sung-young.kim@pwc.com

Small and Midsize Enterprise and Startups Service Center

Bong-Kyoon Kim 3781-9975
bong-kyoon.kim@pwc.com

Knowledge & Innovation

Han-Chul Cho 3781-2577
han-chul.cho@pwc.com

Jae-Hoon Jung 709-0296
jae-hoon_3.jung@pwc.com

Samil Infomine

Heui-Tae Lee 3489-3001
heui-tae.lee@pwc.com

pwc 삼일회계법인