



# Korean Tax Update Samil Commentary

May 15, 2023

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## Government Considers Tax incentives to Stimulate Corporate Investment in Private Venture Capital Funds

In order to stimulate corporate investments in private venture capital funds, the government plans to introduce tax incentives for corporate investors who become major contributors to such funds. The plan is part of the "Innovation Venture and Startup Funding Support and Competitiveness Enhancement Plan" announced by the Ministry of SMEs and Startups on April 20, 2023. Amendments to the Venture Investment Promotion Law, aimed at stimulating capital inflows into private venture capital funds, have recently been passed by the National Assembly in March 2023. Subsequently, the government is planning to amend the Special Tax Treatment Control Law in 2023 for tax incentives to promote such investments. The plan also includes eased regulations to allow corporate venture capitals to invest in overseas subsidiaries owned by domestic start-ups (with a 50% or more shareholding in the subsidiaries) on an equal footing with their investments in domestic companies.

## Tax Tribunal Announces Measures to Strengthen Taxpayer Rights Protection

The Tax Tribunal has announced measures to strengthen taxpayer rights protection that would shorten the time for processing petitions filed and introduce a mediation system for small claims cases. Major elements of the measures include:

- Abolishing the standard petition handling procedures, which currently allow for two hearings held with a two-week interval where the parties present arguments or replies twice. While these standard procedures are intended to facilitate thorough deliberation, they also have caused delays in the case handling process. Under the announced measures, the relevant parties will basically be allowed to submit arguments or replies once, in accordance with the principles of the Basic National Tax Law, while reserving an additional opportunity for arguments or replies if necessary.
- Improving the existing procedure to allow a resolution to be made through a single hearing session, at the discretion of the chief tax judge, even for complex cases that currently require at least two separate hearing sessions for deliberation of a controversial issue before the Tribunal renders a final decision.
- Reducing the investigation and adjudication period under the Tribunal's rules on procedures from 30 days to 20 days, which may be extended if deemed necessary. The statutory period of investigation and adjudication under tax law is currently set at 30 days.
- Seeking to introduce a mediation system to resolve certain cases\* through the parties reaching an agreement, while the expansion of small claims cases put at the discretion of the chief judge. The threshold of a small claims case will be raised from less than KRW 30 (10) million to less than KRW 50 (20) million in the amount of national tax claim (local tax claim) (\*e.g. small claims cases related to the valuation of the FMV of gifted or inherited real estate and the unclear scope of unreported business income.). At present, the consultations are underway regarding the amendment of the relevant law. If amended, the law is expected to be enforced from January 2024.

## NTS Seeks Public Comments on a Draft Amendment to the Administrative Rules on Taxpayer Rights Protection

The National Tax Service (NTS) announced a draft amendment to the Administrative Rules on Taxpayer Rights Protection, seeking public comments on it through May 17, 2023. Under the draft amendment, proposed changes include: i) abolishing the existing restrictions regarding the amount of tax for which a taxpayer advocate can request an abatement or a rectification in response to a taxpayer's complaint; 2) allowing taxpayers to express their opinions as regards to the extended duration or expanded scope of investigation as well as the retention period of taxpayer documents, which allows them to present their arguments throughout the entire deliberation process of the NTS Taxpayer Advocate Council; and 3) ensuring taxpayers are informed about their rights to utilize the taxpayer advocate program\* upon the advance notification of an intended tax audit, rather than at the time of audit commencement. (\* Note: the program allows a taxpayer advocate, upon a

taxpayer's request, to participate as an observer during a tax audit to assist the taxpayer with respect to compliance with the audit procedures, protection of the taxpayer's rights, etc.)

## NTS Seeks Public Comments on a Draft Amendment to the Audit Manual

The NTS announced draft amendments to its audit manual including a new procedure to explain audit findings to taxpayers, seeking public comments by May 17, 2023. Major draft amendments include: 1) introducing a new procedure that mandates the audit team to provide the audited taxpayer with an explanation of audit findings and reasons for an additional tax assessment after the completion of the audit procedure; 2) strengthening the requirements for search and seizure conducted without a warrant so that such actions will only be permissible in cases where a tax offender faces a sentence of at least three years and is likely to flee or destroy evidence (in this case, a warrant for search and seizure shall be requested within 48 hours after the search or seizure); and 3) the deadline for a written request for taxpayer rights protection will be required to be specified in the written notification provided to taxpayers regarding the expanded tax audit scope.

## Rulings Update

### How to determine the special income tax concession period for foreign workers who had worked in Korea before 2013

Under the former Special Tax Treatment Control Law (STTCL) (effective before December 31, 2022), foreign employees working in Korea may choose to apply for a flat income tax rate of 19% (excluding local income tax) on their employment income earned in Korea for a five-year period starting from the first day of their work in Korea, rather than the normal progressive income tax rates of between 6% and 45% (excluding local income tax). The recently amended STTCL (effective on or after January 1, 2023) has extended the period eligible for the special tax concession from five years to 20 years, and the amendment is also applicable to foreign employees who have worked for not more than 20 years from the first day of their work in Korea as of January 1, 2023. (Article 18-2(1) and Agenda 10 of the STTCL, amended on December 31, 2022).

In the past, foreign workers could apply for the special tax concession without any limitation period. In order to ensure equal tax treatment for both domestic and foreign workers, the STTCL was amended in January 2014 to introduce a five-year limitation period for the special tax concession (Article 18-2 of the former STTCL, amended on January 1, 2014). As an exception, however, foreign workers who had started working in Korea prior to January 1, 2014 were allowed to continue to apply the special tax concession until December 31, 2018. (Agenda 59 of the former STTCL amended on January 1, 2014 and Agenda 10 of the STTCL amended on December 20, 2016)

Also, in counting the five-year period, the Tax Tribunal and the Ministry of Economy and Finance (MOEF) interpreted that in the case of foreign workers who had worked in Korea before December 31, 2013, but did not work in Korea as of January 1, 2014, if the foreign workers restarted working in Korea after January 1, 2014, the five-year period should begin from the

restart date of their work in Korea after January 1, 2014. (*Joshim2019Seo3540, 2020. 2. 26, Individual Taxation Division of the MOEF -243, 2022. 5. 30.*)

According to the latest authoritative interpretation by the MOEF, in determining the eligibility of the special tax concession for foreign workers who had worked before December 31, 2013 under the recently amended STTCL, the 20-year period should not begin from the date on which they first started working in Korea before January 1, 2014. Rather, the MOEF interpreted that the 20-year period for the special tax concession should begin from January 1, 2014 if the foreign workers continuously worked in Korea before December 31, 2013 and after January 1, 2014, and that the 20-year period should begin from the restart date of their work in Korea after January 1, 2014 if the foreign workers had worked before December 31, 2013 but did not work as of January 1, 2014, and restarted working in Korea after January 1, 2014. (*Individual Taxation Division of the MOEF -135, 2023. 2. 21.*)

On this basis it is interpreted that the beginning date of the 5-year special tax concession period under the former STTCL (January 1, 2014 or the restart date of work after January 1, 2014) should be applied in the same manner for the beginning date of the 20-year period under the recently amended STTCL. Consequently, for foreign workers having worked in Korea before December 31, 2013, the special tax concession period is effectively extended since their working period in Korea before December 31, 2013, is excluded in counting the 20-year period with respect to the application of the special tax concession. Therefore, for foreign workers who had worked in Korea before December 31, 2013, it is necessary to determine the special tax concession period under the amended STTCL in accordance with the recent interpretation.

**Whether penalties would be imposed on the filing and payment of the total corporate local income taxes to the local government having the jurisdiction over the head office without apportioning the taxes among other business places of the corporation**

According to the Local Tax Law (LTL), where a corporation has business places under the jurisdiction of two or more local governments, the corporation is required to file and pay corporate local income taxes apportioned based on the ratio of the number of employees and the total floor area of buildings as prescribed in the Presidential Decree of the LTL to the local government authorities having the jurisdiction over each business place, respectively. The filing and payment should be completed within four months from the end of the month in which the fiscal year-end of the corporation falls. (Articles 89(2) and 103-23(1) of the LTL)

The issue of this case was whether it would be appropriate to impose penalties for non-filing and non-payment on the applicant company having multiple business places under the jurisdiction of two or more local governments, where the company first filed a corporate local income tax return with and paid the total taxes to the local government having the jurisdiction over the head office of the company without apportioning the taxes among other local governments having the jurisdiction over its other business places, but later it separately filed amended corporate local income tax returns with and paid the apportioned amount of taxes to the respective local government having the jurisdiction over each business place.

Regarding this, the Ministry of Government Legislation and the Tax Tribunal previously determined that a corporation would not be subject to penalties if the corporation filed its

corporate local income tax return with and paid the total taxes to a certain local government, followed by filing amended corporate local income tax returns for the apportioned amount of taxes separately with local governments having the jurisdiction over each individual business places. (*Beopjecheo 14-0217, 2014.7.7., Joshim2016ji1186, 2017, 8.9*) However, in the recent ruling, the Tax Tribunal decided that it would be reasonable to impose penalties on the applicant company in the concerned case on the following grounds among others: under the LTL, penalties may be exempt where a company found an error in the apportioned amount of corporate local income taxes per the original tax return filed by due date, and it paid additional taxes through the filing of the amended tax return before receiving a tax assessment notification from the relevant local government, or through the post-filing of the tax returns after the statutory filing due date (Article 103-24(2) and (3) of the LTL). However, the penalties would not be exempted where a company having two or more business places did not file nor pay the apportioned amount of taxes separately to the respective local governments by the due date, but it only filed a tax return (or an amended return) for the total taxes with only one of the local governments under the new provision of the LTL ('provision in question', Article 103-24(6) newly enacted on December 27, 2016) (*Joshim2022ji 0737, 2023. 3. 31.*)

According to the guidance on the application of local tax regulations published by the Ministry of Interior and Safety, the provision in question is a regulation designed to prevent the unfairness of granting a penalty exemption to a corporation which makes late filing and payment of local income tax after the statutory due date in cases where the corporation had first filed and paid corporate local income tax with one of the local governments, and it later filed amended tax returns for the apportioned amount of taxes with the respective local governments for reasons such as a simple mistake, etc. after the due date. Given the intended purpose of this regulation, it is considered that the recent Tribunal decision, which supports the imposition of penalties on the corporation that neglected its filing obligation subject to the apportionment of corporate local income taxes, aligns with the legislative intent of the provision in question.

Therefore, it seems important to note that if a corporation with two or more business places fails to apportion corporate local income taxes for its individual business places and instead files and pays taxes collectively to the local government having the jurisdiction over one of the business places, such as the head office, the corporation should be subject to penalties for other business places under the jurisdiction of other local governments, even if the corporation later voluntarily files an amended return with the respective local governments or makes post-filings of the returns after the statutory due date for the apportioned amount of the local income tax by business place. Therefore, it is necessary for a domestic corporation with two or more business places across different jurisdictions of local governments to ensure the proper filing and payment of corporate local income tax with the appropriate apportionment of local income tax for each business place.

*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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