Korean Tax Update
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Tax News

Korea's National Tax Revenues for the First Three Months of 2023

According to the announcement by the Ministry of Economy and Finance on April 30, the total national tax revenues for the first three months of this year reached KRW 84.9 trillion, marking a decrease of KRW 2.2 trillion (or 2.5%) compared to the same period in 2023. Corporate income tax revenue, which has significantly contributed to this decline, amounted to KRW 18.7 trillion — a sharp decrease of KRW 5.5 trillion (or 22.8%) from the previous year. This decline deems to be attributed to poor business results in 2023, particularly those of companies with fiscal years ended in December.

- **Individual income tax revenue** amounted to KRW 27.5 trillion during the three-month period, recording a modest decline of KRW 700 billion (2.5%) compared to the same period of the preceding year. Despite a surge in interest income attributable to persistent high interest rates, this downturn primarily stemmed from reductions in wage and salary income taxes due to reduced performance incentives paid to employees.
- During the same period, **value-added tax (VAT) revenue** surged to KRW 20.2 trillion, recording a substantial increase of KRW 3.7 trillion (22.5%) from the same period in 2023. This upturn was driven by increased VAT filings and payments and a concurrent decrease in VAT refunds.
- **Securities transactions tax revenue** totaled KRW 1.4 trillion for the period, marking a notable increase of KRW 200 billion (16.2%) from the corresponding period in the previous year. This growth was facilitated by robust transactions of publicly traded securities.
- **Revenue from customs duties** amounted to KRW 1.6 trillion over the three-month period, representing a decline of KRW 300 billion (14.2%) compared to the same period in 2023. Sluggish imports were one of the factors contributing to this decrease.

MOIS' Bill to Amend Local Tax Regulations Proposes an Upper Limit for Property Tax Base

The Ministry of Interior and Safety (MOIS) has proposed amendments to the Presidential Decree and the Enforcement Rule of the Local Tax Law (LTL) that include proposals to alleviate property tax burden on low and middle income households and foster growth in local housing markets.

Temporary Adjustment of Fair Market Price Ratio: The fair market price ratio is used to determine the base of property tax or comprehensive real estate holding tax. In principle, residential properties are assessed at a fair market price ratio of 60% of the announced standard prices. However, in order to alleviate the strains caused by a significant increase in property prices,

a temporary adjustment to the ratio was applied in 2023, resulting in alleviated property tax burdens on individual single homeowners. Under this temporary measure to single homeowners, the fair market price ratio varies according to the residential property's announced standard price: a ratio of 43% for houses with announced prices at KRW 300 million or less; a 44% ratio for properties priced between KRW 300 million and KRW 600 million; and a 45% ratio for properties exceeding KRW 600 million in price. These ratios will continue to be applied in the same manner in 2024. Unless these special fair market price ratios for single homeowners are extended this year, homeowners will be subject to the same 60% ratio as that for multiple homeowners and corporations. This would significantly increase the property tax burden for individual single homeowners.

Upper Limit for Property Tax Base: In 2023, an amendment to the LTL was made to introduce an upper limit for the property tax base to limit the increase in property taxes. A proposed Presidential Decree of the LTL aims to set specific criteria for the initial application of this upper limit this year. According to the proposed bill, the property tax base for 2024 will be determined at the lower of "the current year's tax base" or "the previous year's tax base, plus approximately 5% thereof"*. The existing property tax base was computed at the announced standard price, multiplied by the fair market price ratio, without a specific upper limit applied.

* *The sum equivalent to the tax base for the previous year, plus 5% of the current year's tax base*.

Support to facilitate purchases of unsold units of new apartments: A corporate restructuring REIT purchasing unsold new apartment units in non-metropolitan areas will benefit from a reduced rate of acquisition tax (1-3%) rather than the standard higher rate (12%) applicable to corporate acquirers. This exception to the higher acquisition tax rate shall apply specifically to apartment units acquired by corporate restructuring REITs during the two-year timeframe following the policy announcement, spanning from March 28, 2024, to December 31, 2025.

The Tax Tribunal Releases its Statistical Yearbook for 2023

The Statistical Yearbook of the Tax Tribunal for 2023 was released on March 29, 2024. It reveals that the Tribunal achieved record highs in many aspects including the number of cases received, cases to be handled and cases actually handled. The acceptance ratio, calculated by dividing the number of accepted cases by the total number of cases handled, surged to 20.9% in 2023, marking a significant 6.5 percentage point increase from the 14.4% recorded in 2022. There are some cases dismissed due to issues related to the unconstitutionality of the Comprehensive Real Estate Holding Tax Law and cases annulled ex officio by the tax authorities after advance cases accepted. If such cases are excluded, the acceptance ratio goes up to 27.9%. In average, it took 172 days for a case to be handled, marking a notable decrease of 62 days from the average of 234 days during 2022. Also, more than half of cases were handled within the statutory period of 90 days, compared to 44.3% in the previous year. Tax Tribunal officials attribute this improvement to various efforts aimed at enhancing the tax coordination system. These efforts included eliminating the standard settlement procedures*, which often caused delays, in the latter half of 2022.

Additionally, it has been instrumental in streamlining processes and expediting settlements to reorganize the Coordination Team of the Tax Tribunal to assign officials responsibilities by tax item, along with the elevation of their positions, simplify the approval steps and allow investigators (directors) to directly prepare written investigation reports.

* Standard handling procedures include a series of steps where both the taxpayer and the tax authority exchange responses regarding tax disputes. Following the tax authority's initial reply to the Tax Tribunal, the taxpayer has two weeks to provide a counter-response. Similarly, the tax authority retains the option to offer an additional reply within a two-week period in response to the counter-response. However, delays could arise when the tax authority surpasses the two-week deadline for submitting its reply.

Four Metropolitan Governments Submitted Applications to be Designated as Special Opportunity Development Zone

The Ministry of Trade, Industry and Energy announced that four metropolitan governments have submitted applications to be designated as Special Opportunity Development Zones as of the end of March 2024, including Daegu Metropolitan City, Jeollanam-do, Busan Metropolitan City and Gyeongsangbuk-do. The special zones are designed to provide a package of tax and regulatory incentives to promote corporate investments in local areas following the approval of applications submitted by local governments and prospective investors. The Ministry aims to accelerate the designation process for these zones by expediting the process to obtain approval from the Presidential Council on New Initiative for Regional Development shortly after completing the review of the applications. The applications submitted in the first quarter are summarized as below:

- Daegu Metropolitan City: Submitted the application for prospective investments to build a plant for cathode materials of secondary batteries (L&F Co.) and a new artificial intelligence (AI) data center (SK Inc. C&C).
- Jeollanam-do: Submitted the application including a prospective investment to establish a new plant of POSCO FUTURE M for cathode materials of secondary battery and for an animation studio of Locus Corp. Locus has recently agreed with the local government to relocate its head office in Seoul to a city in Jeollanam-do.
- Gyeongsangbuk-do: Applied for being designated as Special Opportunity Development Zone for prospective investments to build a new semiconductor wafer manufacturing factory and vaccine production facilities.
- Busan Metropolitan City: The application was filed with a focus on financial institutions.

MLIT Oversees Registrations of Company Cars with Dedicated License Plates and Shares Relevant Information with the NTS

According to the Ministry of Land, Infrastructure, and Transport (MLIT), since January 2024 the government has enforced the use of exclusive license plates on company cars to curb their misuses for personal purposes. The exclusive license plates are primarily required for high-end sedans owned by companies valued at KRW 80 million or more, long-term rental vehicles (lease exceeding one year) and government vehicles. Recently, certain rental companies have been reportedly encouraging companies to have short-term contracts (less than one year) to avoid the requirement to use exclusive license

plates and attach general plates. According to the Ministry, even if a company signs a shorter-term lease less than one year for a vehicle priced at KRW 80 million or more, if the combined period of separate contracts comes to one year or longer, the company is still required to install a dedicated green-colored license plate. For vehicles without a necessary dedicated license plate, taxpayers are not allowed to get tax deductions for relevant expenses under Article 50-2(4) of the amended Presidential Decree of the Corporate Income Tax Law. The Ministry utilizes the vehicle management system to monitor new registrations of company cars subject to the exclusive license plate requirement, regularly sharing the information with the NTS to combat possible attempts to evade tax related to company cars.

Changes in Tax Laws

Amended Rules for the Application of a Tariff-rate Quota under Article 71 of the Customs Law

Background of Amendment and Key Points

Under Article 71 (1) of the Customs Law, if it is necessary to promote imports for the purpose of ensuring smooth supply of goods or strengthening competitiveness of industries, or to stabilize domestic prices of goods whose import prices have surged, tariff rates lower than the basic rate may be applied to certain quantities of goods under the quota system. To address the shortage of fruit supplies due to a poor harvest and to stabilize living expenses, the rules have applied a 0% tariff rate to limited import quantities of seven kinds of fruits including bananas and pineapples, effective from January 19, 2024 through June 30, 2024. The latest amendment applies the 0% tariff rate to all the import quantities of these seven fruit items. Furthermore, starting from April 5, 2024 through June 30, 2024, the amended rules apply tariff rates of 0% to 10% to five additional types of imported fruits, such as cherries and kiwis. (Proclaimed and enforced on April 4, 2024)

Amended Presidential Decree of the Individual Consumption Tax Law

Background of Amendment and Key Points

The amended Presidential Decree prolongs the temporary application of the flexible tax rate on butane among liquefied petroleum gas products by additional two months, extending through June 30, 2024. This amendment is designed to ease the financial strains stemming from increased gas and fuel expenses due to persistently high oil prices. (Proclaimed and enforced on April 30, 2024)

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

Background of Amendment and Key Points

The amended Presidential Decree extends the temporary application of the flexible tax rate to gasoline, diesel, and other similar alternative fuels by additional two months through June 30, 2024. This amendment is designed to ease the financial strains stemming from increased gas and fuel expenses due to continued high oil prices. (Proclaimed and enforced on April 30, 2024)

A New Ordinance for Imposing Anti-Dumping Duties on the Importation of White Cement from Egypt

Background of Enactment and Key Points

According to Article 51 of the Customs Law, if imported foreign goods are found to be priced below their normal pricing and pose a threat of material harm to domestic industries, etc., anti-dumping duties may be levied on these imported goods in addition to customs duties to protect the affected domestic industries. Based on an investigation conducted by the Foreign Trade Commission, it has been confirmed that the importation of white cement from Egypt at dumped prices has indeed caused material harm to the relevant domestic industry. Consequently, the new ordinance has been enacted to impose anti-dumping duties on those goods for the next five years. (Ordinance of the Ministry of Economy and Finance No. 1065, Proclaimed and enforced on April 30, 2024)

Rulings Update

Whether gift tax would be imposed on transactions that are excluded from taxable gifts under the specific provisions based on the comprehensive gift taxation rules

Articles 33 to 42-3 of the Inheritance and Gift Tax Law (IGTL) provides specific provisions for determining the value of the gifted profits from specific transactions and activities that are subject to gift taxation (hereinafter referred to as 'the specific provisions'). Additionally, the comprehensive gift taxation provision was newly introduced under the amended IGTL, which allows for the calculation of the value of gifted property by applying the specific provisions in cases where the economic substance is similar to those under the specific provisions (effective December 15, 2015 with the amendment to Article 4(1)(6) of the old IGTL). This case involves a taxpayer who earned profits from the conversion of bonds with warrants into shares in a company where the profits were not subject to the specific provisions as the taxpayer is not a related party of the largest shareholder in the company issuing these bonds (pursuant to an amendment of Article 40(1)(2)(c) of the IGTL, effective December 15, 2015). The key issue in this case pertains to whether gift tax would be imposed on the taxpayer under the comprehensive gift taxation provision by treating that the concerned profits are similar to profits earned by a related party of the largest shareholder in the issuing company in terms of economic substance.

Regarding this issue, the Supreme Court ruled that: i) one of the specific provisions pertinent to this case (Article 40(1)(2)(c) of the old IGTL) is to be interpreted as limiting the taxable subjects and scope (such as requiring profits earned by a related party of the largest shareholder), rather than encompassing all profits from conversions of convertible bonds, etc. into shares under the gift taxation; ii) consequently, unless there are specific circumstances, such as a separate provision explicitly subjecting profits from transactions to gift tax liability, profits from transactions cannot be taxed under the concept of comprehensive gift taxation (Article 2 (6) of the IGTL); and iii) the comprehensive gift taxation provision (Article 4 (1)(6) of the IGTL) cannot be construed as a separate provision aiming to impose gift tax on transactions or activities that are excluded from taxable gifts under the specific provisions. Accordingly, the Supreme Court revoked and remanded the lower court's decision (*Seoul High Court 2020nu33840, 2020.10.16*), which held that the taxpayer's conversion gains could be subject to gift tax under the comprehensive gift taxation provision (*Daebeop2020du53224, 2024. 4. 12.*).

Observation: To deal with irregular wealth transfers, the IGTL introduced the comprehensive gift taxation concept at the end of 2003 (Article 2(3) of the old IGTL, amended on December 30, 2003). However, the Supreme Court clarified that where transactions or activities are excluded from the scope of taxable gifts under the specific provisions governing the scope and limits of taxable gifts, gift tax cannot be imposed on these excluded transactions and activities solely based on the comprehensive gift concept (*Supreme Court Decision 2013Du13266, 2015.10.15., etc*.). Subsequently, in the 2015 amendment to the IGTL, a new provision for the comprehensive gift taxation (Article 4(1)(6) of the IGTL, amended on December 15, 2015) was established to reinforce the comprehensive gift taxation concept.

This recent Supreme Court ruling reaffirms the legal principles regarding the relationship between the specific provisions and the comprehensive gift taxation concept, which remained unchanged even after the 2015 amendment to the IGTL. Furthermore, it represents the first decision explicitly stating that gift tax cannot be imposed on transactions or activities which are excluded from the scope of taxable gifts

under the specific provisions based on the new provision for the comprehensive gift taxation on December 15, 2015. In addition, it is expected that this court decision will enhance the predictability of taxation for taxpayers and the stability in tax law relationship regarding the comprehensive gift taxation.

Whether the grace period for SME would apply for a company disqualifying as SME due to the amendment to the Presidential Decree of the Framework Act on SME

Article 2(2) of the Presidential Decree of the Special Tax Treatment Control Law (STTCL) provides for a grace period, allowing companies to maintain their status as small and midsize enterprises (SMEs) despite not meeting certain SME criteria, such as annual sales, or being disqualified from SME status due to amendments to the Presidential Decree of the Framework Act on SME (Article 3(1)(2), Tables 1 and 2, i.e., Scope of SME). The grace period for maintaining the SME status is available for four tax years, including the year when the cause for failing to meet any of the SME criteria occurs, as specified in Article 2(5) of the STTCL ('the provision in question'). This case involves a company that failed to meet an SME criterion due to the amendment to the Presidential Decree of the Framework Act on SME in a particular tax year. The central issue in this case is whether the grace period under the provision in question would be available for all companies not meeting a revised criterion for SME under the amended Presidential Decree in the concerned tax year, or only for those companies which do not meet a revised criterion for SME under the amended Presidential Decree but would have qualified as an SME under the old criteria for SME before the amendment in the concerned tax year.

The court clarified that the phrase "cases where a company no longer qualifies as an SME due to amendments in the pertinent Presidential Decree of the Framework Act on SME" does not include the case where a company has merely changed from a SME status in the previous tax year to a non-SME status in the current tax year. Rather, it is limited to cases where, under the old SME criteria before the amendment of the Presidential Decree, a company has qualified as an SME not only in the previous tax year but also in the current tax year, whereas the company no longer meets the SME criteria from the current tax year due to the legislative amendment. Consequently, the court ruled against the appellant company, stating that since the company failed to meet the old SME criteria in the current year even under the pertinent Presidential Decree before the amendment, it would not be eligible for the grace period under the provision in question (*Suwon District Court 2022Guhap73063, 2023. 4. 6., Suwon High Court2023Nu11876, 2023. 12. 8., Daebeop2024Du30502, 2024. 4. 12*.).

Observation: This recent court decision appears to be in line with both the legislative intent and the literal text of the provision in question, which aims to offer a grace period for companies that fail to meet SME criteria due to external factors, such as amendments to the Presidential Decree of the Framework Act on SME. The decision underscores that the grace period specified in the provision would apply only where a company fails to meet the SME criteria and its failure is caused by the amendment of the relevant President Decree. As such, where there is an amendment to the SME criteria in the relevant Presidential Decree, it is necessary to additionally review whether the company satisfies the old SME criteria under the Presidential Decree before the amendment in the concerned tax year in determining whether the grace period would apply to the company.

Deductibility of interest expenses on borrowings with the collateral of rental business purpose properties for the payment of gift taxes

According to the Individual Income Tax Law (IITL), interest paid on debts directly used to generate gross income from business activities is deductible as necessary expenses in calculating business profits for a taxable year (Article 55(1)(13) of the IITL). However, interest paid on borrowings not related to a business, such as household-related loans, are not deductible (Article 61(1)(1) of the Presidential Decree of the IITL). The main issue in this case is whether interest expenses paid on borrowings by a taxpayer for the payment of gift taxes on the shares in rental purpose property gifted to the taxpayer would be treated as business related expenses that are deductible or as non-business related expenses that are not deductible in calculating the rental business profits of the real property.

The authoritative interpretation suggests that where shares in real property used for rental business are gifted to an individual and the individual borrows funds with the collateral of the gifted shares for the purpose of gift tax payments, the borrowings would be treated as debts directly used to generate gross income from the rental business and so, interest expenses paid on the borrowings would be deductible as necessary expenses in calculating rental business profits, provided that such borrowings do not result in an excess withdrawal of the equity amount, which was previously invested for rental business purposes (*Seomyeon-2022-Beobgyusodeuk-5401, 2024.3.5*).

Observation: Previous authoritative interpretations had ruled that interest paid on borrowings for the payment of inheritance taxes or gift taxes was not allowed as deductible expenses. However, the Supreme Court decided that borrowings made for the redemption of the equity amount, which had been used as a source of funds to purchase real property, could be regarded as business-related debts, thus, interest expenses paid on the borrowings would be considered as deductible expenses (*Daebeop2000du1799, 2002.1.11*). Based on this decision, the Tax Tribunal concluded that borrowings for the payment of gift taxes could be viewed as business related debts that are used to redeem the equity amount previously invested in real property, and interest expenses paid on such borrowings should be deductible. (*Joshim2019seo1569, 2019.9.3*). The NTS accepted the Tax Tribunal's position, thereby changing its interpretation that interest expenses on borrowings for the payment of gift taxes are deductible (*Gijoon-2019-Beobryeonghaeseoksodeuk-0624, 2020. 2. 27., and Revocation of NTS Interpretations on June 30, 2022*).

Therefore, it is crucial to note that where an heir or a donee of real property borrows funds with the collateral of inherited or gifted real property for payments of inheritance taxes or gift taxes, interest expenses on these borrowings may be treated as business-related expenses that are deductible in calculating their business profits. However, it is noteworthy that if there is an excess withdrawal of the equity amount due to the excessive borrowings, the interest expense on such borrowings cannot be considered deductible.

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