Tax News Flash

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MOEF Announces the Korean Tax Reform Proposals for 2022

In Brief

The Ministry of Economy and Finance (MOEF) announced on July 21, 2022 the government's bill to amend a series of tax laws including the corporation tax law ('the Reform Bill'). The Reform Bill includes measures aimed at enhancing corporate competitiveness, expanding tax support to facilitate corporate investment and job creation, revitalizing capital markets, expanding tax revenue sources to enhance public finance sustainability and easing the tax burden of low and middle-income families.

To help enhance the competitiveness of domestic companies, the Reform Bill would provide a three percentage point reduction in the top marginal corporate income tax rate and, in the same context, abolish the existing 20% additional tax on excess corporate earnings reserves. Regarding wage and salary income, the Reform Bill aims to reduce tax burden on individuals by adjusting individual income tax brackets.

Also, the Reform Bill includes legislative proposals to adopt global minimum tax rules in January 2024 which are aligned with the Global Anti-Base Erosion Model Rules (Pillar Two) released by the Organization for Economic Cooperation and Development (OECD) in December 2021.

The proposals are estimated to result in a KRW13.1 trillion decline in annual tax revenue including a KRW2.5 trillion decline in individual income tax revenue and a KRW6.8 trillion decline in corporate income tax revenue. The government's reform proposals will be finalized with modifications before being submitted to the National Assembly on September 2, 2022. If approved by the National Assembly, most of the proposed changes will become effective January 1, 2023 unless otherwise specified. Provided below is a brief summary of the significant tax reform proposals that may affect domestic corporations as well as foreign investors doing business in Korea.

pwc 삼일회계법인

Measures to Enhance Corporate Competitiveness

Adjustment of corporate income tax rates and brackets. Under the Reform Bill, the top marginal corporate income tax rate would be lowered from 25% to 22% and the income tax base brackets would be simplified as below.

Current		Proposed	
Tax Base (KRW)	Marginal tax rate	Tax Base (KRW)	Marginal tax rate
200 million or less	10%	**500 million or less**	**20%** (but **10%** for qualifying SMEs and medium-scale companies*)
More than 200 million to 20 billion	20%	More than 500 million to 20 billion	20%
More than 20 billion to 300 billion	22%	More than 20 billion	22%
More than 300 billion	25%		

* Note that small and midsize enterprises (SMEs) and medium-scale companies (except those carrying on consumption-oriented businesses such as hotels, inns, or certain bar businesses, etc. specified in tax law) would not be eligible for the 10% special tax rate if any of the following conditions are met: i) the controlling shareholder, etc. owns more than 50% of total shares in the company; and ii) the real estate rental business is the company's main business, or its real estate rental income, interest and/or dividend income account for 50% or more of the company's sales revenue.

Introduction of a dividend received deduction (DRD) for dividends from a foreign subsidiary. The Reform Bill would introduce DRD rules to dividends received by a domestic company from its foreign subsidiary. Currently, a domestic company would have to include such dividends in its taxable income, subject to a normal corporate income tax rate while it may claim a foreign tax credit for foreign tax paid by the foreign subsidiary to the extent of a deduction limit. Under the Reform Bill, the new DRD rules, rather than the existing foreign tax credit rules, would apply to dividends received from a qualifying foreign subsidiary where (i) a domestic company has owned at least 10% of the shares or interest in the foreign subsidiary for at least six months prior to the dividend record date (5% for a foreign subsidiary carrying on an overseas natural resources development business; no shareholding threshold is required for dividends through a reduction of capital reserve of the foreign subsidiary); and (ii) the dividends received from the foreign subsidiary fall within the scope of "qualifying dividends" which includes dividends from profits, distributions from earnings reserves and certain deemed dividends under the Corporate Income Tax Law (CITL). Note that deemed dividends from undistributed earnings under the Korean controlled foreign company (CFC) rules, deemed dividends derived from hybrid financial instruments (*from which income is treated as an interest payment in a foreign jurisdiction but is treated as deemed dividends in Korea*) and dividends from certain indirect investment vehicles (excluding private equity funds for institutional investors) would be excluded from the scope of qualifying dividends eligible for the DRD. The DRD rate will be 95% of the dividend received, or deemed to be received, by the domestic company. With respect to dividends received before December 31, 2022 (including foreign tax credits carried forward due to a deduction limit), the existing foreign tax credit rules will continue to apply.

Eased criteria for foreign subsidiary eligibility for indirect foreign tax credits. The scope of qualifying foreign subsidiaries eligible for an indirect foreign tax credit is currently limited to those foreign subsidiaries where a domestic parent has been directly holding at least 25% of the shares or interest in the foreign subsidiary for at least six months prior to the dividend declaration date (i.e., the date on which dividend payment is approved at the shareholders' meeting) of the foreign subsidiary. Under the Reform Bill, to be aligned with the foreign subsidiary shareholding requirement for the DRD, the 25% threshold would be lowered to 10% and the six-month period begins from the dividend record date with respect to qualifying foreign subsidiaries eligible for indirect foreign tax credits. There will be no change in the 5% threshold applied to foreign subsidiaries carrying on overseas natural resources development business.

Rationalization of the DRD regime for dividends from domestic subsidiaries. Currently, the dividend received deduction (DRD) ownership ratios differ depending on the type of corporation (i.e., holding company vs. other companies; and listed subsidiaries vs. unlisted subsidiaries) and the ownership percentage held by a company in its domestic subsidiary paying a dividend. The DRD regime would be rationalized and aligned with the international standards as follows: i) 100% deduction for dividends received from a domestic subsidiary in which the dividend receiving company has at least 50% ownership; ii) 80% deduction in the case where the ownership is at least 30% but less than 50%; and iii) 30% deduction in the case where the ownership is less than 30%. The proposed DRD would be applicable to dividends received on or after January 1, 2023. For dividends received in 2023 and 2024, the dividend receiving company would be allowed to choose to apply the existing or a new DRD regime.

Increased limit for the deduction of losses carried forward. Under the Reform Bill, the deduction limit that companies are allowed to deduct losses carried forward from taxable income would increase to 80% from 60% of taxable income for the respective year, whereas the deduction limit for SMEs remains unchanged at 100% of taxable income.

Expiration of additional taxation on excess corporate earnings reserves. The existing sunset provision on the 20% additional tax on excess corporate earnings reserves, which was designed to facilitate the use of corporate retained earnings to fund facility investment and payroll increases, would expire as scheduled at the end of December 2022. Even after the sunset, the additional taxation will still apply to the excess corporate earnings reserves already created and carried forward before the sunset.

Measures to Strengthen Support for Corporate Investment and Job Creation

Introduction of an integrated employment-related tax credit regime. The Reform Bill would introduce an integrated employment tax credit regime which replaces various tax credits aimed at encouraging employment and job creation. Currently, a number of tax credits separately apply to qualifying companies where: there is an increase in the number of full-time employees from the preceding year; female employees with career interruption specified in tax law are re-hired in SMEs and medium-scale companies; non-regular workers are transitioned into regular workers; or employees return to their job after parental leave. Under the integrated tax credit system, most companies, except those operating in consumption-oriented service businesses, would be entitled to a 'basic tax credit' at a fixed amount per employee where there is a net increase in the number of employees from the previous year as proposed below. In this context, the age range to be considered a youth worker would be expanded to be between 15 and 34 years (rather than between 15 and 29 years at present) to promote youth employment, while the tax credit would also be applicable to women with career interruptions. However, if the number of full-time workers decreases within two years after applying the tax credit, an amount equal to the tax credit would be recaptured.

Per employee	Tax credit amount (in KRW)			
	SME (for 3 years)		Medium-scale Co.(for 3 years)	Large Co. (for 2 years)
	In the Seoul metropolitan area	Outside Seoul metropolitan area		
Full-time worker	8.5 million	9.5 million	4.5 million	NA
Regular youth worker, disabled, aged 60 years or over, women with career interruption, etc.	14.5 million	15.5 million	8.0 million	4.0 million

With respect to non-regular workers transitioned to regular workers and employees returning to work after parental leave, SMEs and medium-scale companies would be entitled to an 'additional tax credit' (KRW13 million and 9 million, respectively) for one year, provided that the total number of full-time employees of the company does not decrease from the previous year. However, if the employment of such worker is terminated within two years from the date of transition or return, an amount equal to the additional tax credit would be recaptured.

Change to special tax concession for foreign workers. Currently, foreign expatriates and employees may be eligible for a flat tax rate of 19% (20.9% including local income tax) on income earned in Korea during the first five years of employment if they start work no later than December 31, 2023. A foreign employee can opt to apply the 19% flat tax rate for their gross salary income only for a five-year period starting from the first day of their work. In this case, any other income deductions, tax exemption, and tax credit are disallowed. Under the Reform Bill, the existing five year limitation period would be abolished.

Extension of employment income tax reduction to foreign engineers. Currently**,** qualified foreign engineers who meet prescribed criteria are entitled to a 50% reduction in income tax on their employment income for five years from the first service year in Korea (or a 70% reduction for the first three years and a 50% reduction for the next two years for qualified engineers working in companies specialized in developing or producing specified materials and parts). The current income tax reduction is scheduled to apply to qualified foreign engineers who start to work no later than December 31, 2023. Under the Reform Bill, the 50% reduction period would be extended from five years to 10 years. Meanwhile, the special tax treatment (i.e., a 70% reduction for the first three years and a 50% reduction for the next two years) for qualified engineers working in companies specialized in developing or producing specified materials and parts would expire as scheduled at the end of December 31,2022.

Changes to tax credit for corporate payroll increase. Currently, the tax law applies tax credits (5% for large companies, 10% for medium-scale companies, and 20% for SMEs) on the incremental amount in average corporate payroll over a certain base level calculated in a prescribed manner by taking into account the average corporate payroll over the previous three years (the average payroll increase among SMEs). To be eligible for the tax credit, the number of full-time employees must not decrease from the previous year. Under the Reform Bill, the tax credit would no longer apply to large companies, whereas it would be available for SMEs and medium-scale companies until December 31, 2025, a three-year extension from the initial December 31, 2022 expiry.

Expansion of tax credit for the national strategic technology sector. Currently, a tax credit generally applies to specified categories of facility investments ('basic credit') and an additional tax credit applies to the incremental amount in these facility investments over the previous three years ('additional credit'). The additional credit continues to be capped at 200% of the amount of basic credit. Proposed changes to the basic credit rates by category of technology are presented below.

Category	Large Co.	Medium-scale Co.	SME
General technology	1%	**5%** (up from 3%)	10%
New growth or source technology	3%	**6%** (up from 5%)	12%
National strategic technology	**8%** (up from 6%)	8%	16%

Expansion of tax credit to over the top (OTT) service: A tax credit currently applies to expenses incurred to produce or manufacture video content including films and broadcasting programs. The tax credit for production costs of video content would also be extended to OTT service until the end of December 2025, a three-year extension from the end of December 2022. However, there is no change in the tax credit rates (3% for large companies, 7% for medium-scale companies and 10% for SMEs.)

Extension of tax credit for the acquisition of a foreign company specializing in EPM business. Currently, a domestic company is eligible to claim a tax credit at 5% of the acquisition amount (or 7% and 10% for medium-scale companies and SMEs, respectively) where it acquires (i) shares or interests in a foreign company engaged in specified categories of equipment, parts or materials (`EPM') businesses or (ii) the business or assets of a foreign company engaged in such EPM businesses. Under the Reform Bill, the national strategic technologies prescribed in tax law would also be added in the specified categories of EPM businesses that are eligible for this tax credit. The sunset of the tax credit would also be extended by three additional years until the end of December 2025.

Measures to Revitalize the Capital Market

Two-year postponement of tax on financial investment income. Under the Reform Bill, a new tax on individual income arising from financial investment instruments*, separate from other types of individual income, would be postponed for two years to be effective on or after January 1, 2025. *(*The financial investment instruments include stocks, bonds, investment contract securities, derivative-linked securities, derivatives, etc.)*

Change to scheduled reduction in securities transaction tax. Under the Reform Bill, the schedule for reducing the securities transaction tax rates would be adjusted as presented below.

	Current		Proposed		
Shares traded on	2022	2023	2022	**2023-2024**	**2025**
KOSPI	0.23%	0.15%	0.23%	**0.20%**	**0.15%**
KOSDAQ	0.38%	0.30%	0.38%	**0.35%**	**0.30%**

*Includes 0.15% agriculture and fishery surtax

However, there will be no change in the tax rates for shares traded on the Korea New Exchange (KONEX) and other shares including unlisted and over the counter securities.

Postponement of tax on income from virtual assets for two years. Income derived from the transfer or lease of virtual assets is scheduled to be treated as other income subject to withholding tax at 20% after taking a basic deduction amounting to KRW2.5 million. Under the Reform Bill, the taxation on income from virtual assets would be postponed for two years to be effective on or after January 1, 2025.

Tax exemption on interest or capital gains from government bonds, etc. derived by non-residents or foreign corporations. Non-residents or foreign corporations having no permanent establishment in Korea would be exempt from withholding tax on Korean source interest income and capital gains derived from government bonds (per Article 5(1) of the State Bond Act) and currency stabilization bonds. To invest in government bonds, etc., a nonresident or a foreign corporation would be required to directly open an account with a domestic custody institution (direct investment) or directly invest though a qualified foreign financial institution in Korea (indirect investment). Details on qualified foreign financial institution would be set out in the Presidential Decree of the relevant law. In addition, a non-resident or a foreign corporation would be required to file an application with the concerned district tax office to receive the tax exemption. In case a resident or a domestic corporation is included among investors in an overseas public collective investment vehicle, the concerned investor (rather than a withholding agent) would be required to file and pay tax on such income.

Measures to Reduce Tax Burden for Low and Middle-income Families

Adjustment of individual income tax brackets. The income tax brackets under the Individual Income Tax Law would be adjusted as presented below

Current		Proposed	
Taxable income (KRW)	Marginal tax rate	Taxable income (KRW)	Marginal tax rate
KRW12 mil. or less	6%	**14 mil or less**	6%
More than 12 mil. to 46 mil.	15%	**More than 12 mil. to 50 mil.**	15%
More than 46 mil. to 88 mil.	24%	**More than 50 mil. to 88 mil.**	24%
More than 88 mil. to 150 mil.	35%	More than 88 mil. to 150 mil.	35%
More than 120 mil. to 300 mil.	38%	More than 120 mil. to 300 mil.	38%
More than 300 mil. to 500 mil.	40%	More than 300 mil. to 500 mil	40%
More than 500 mil. to 1 bil.	42%	More than 500 mil. to 1 bil.	42%
More than 1bil	45%	More than 1 bil.	45%

Change to retirement income deduction. Currently, retirement income is eligible for deductions that are graded by the length of service years to provide more deduction for longer service years. To ease the tax burden of retirees, the amount of retirement income deductions would be adjusted as presented below.

Length of service	Current Deductions (KRW)	Proposed Deductions (KRW)
Five years or less	**300,000** x the number of years	**1 mil.** x the number of years
Between six years and 10 years	1.5mil + **500,000** x (the number of years – 5 years)	5mil.+ **2mil.** x (the number of years – 5 years)
Between 11 and 20 years	4mil. + **800,000** x (the number of years -10 years)	15mil.+ **2.5mil** x (the number of years -10 years)
More than 20 years	12mil + **1.2mil.**x(the number of years-20 years)	40mil + **3mil.** x (the number of years-20 years)

Expansion of "youth worker" age criteria. The age requirement to be considered a "youth worker" currently ranges from 15 to 29 years and would be expanded to be from 15 to 34 years. The age requirement applies to corporate income tax exemptions and reductions, etc. for high-technology companies located in nine categories of special zones including research and development (R&D) zone as specified in Articles 11-2(5), 61(6), 99-8(5), etc. of the Special Tax Treatment and Control Law. The age requirement for corporate tax incentives for start-up SMEs and personal income tax reductions for employees hired in SMEs remains unchanged (i.e., between 15 and 34 years).

Measures to Prepare Foundations of Taxation and Identify Sources of Tax Revenue

Expansion of requirement for the issuance of cash receipts. Currently, 112 types of businesses are required to issue cash receipts for payments worth at least KRW100,000 each. The requirement for the issuance of cash receipts would apply to 13 additional types of businesses including department stores, large retail stores and car brokers with respect to goods or services supplied on or after January 1, 2024.

Expanded scope of agents or intermediaries subject to data submission requirements. Currently, where a person or an entity acts in Korea as a sales or settlement agent or intermediary in relation to the supply of services as specified in Article 75 of the Value Added Tax (VAT) Law, the person or the entity is required to submit relevant data to the National Tax Service (NTS) by the end of the month following the end of each quarter. The requirement for submitting data would additionally apply to businesses notified by the NTS Commissioner as an intermediary for the supply of goods and services by operating an 'electronic message board'* as defined in Article 2(1)(9) of the Act On Promotion Of Information And Communications Network Utilization And Information Protection (*a computer program or a technical device with which users can publish information in the form of a code, letters, voice, sound, image, motion picture, or any other form for purposes of disclosing the information to the public by using an information and communications network). Also, under the Reform Bill, the NTS Commissioner would be empowered to request the submission in the event of failure to comply with the submission requirement or the submission of incorrect data. Non-compliance with the NTS request would be subject to fines of up to KRW20 million. The proposed changes would apply to data required to be submitted on or after July 1, 2023.

Clarification for the scope of customs data submissions for related party transactions. Under the Customs Act, in order to assess the appropriateness of customs value, a customs office may request the relevant related party to submit data to determine the customs value in related party transactions as well as evidential data to support the determination. In this regard, computerized data would be added to the data subject to the submission requirement. Currently, failure to comply with the requirement for submitting data to determine the customs value is subject to fines up to KRW100 million. The penalty would also apply to non-compliance with the submission requirement for evidential data as well as the false submission of evidential data. The maximum penalty for non-compliance with the request for rectification continues to be KRW200 million.

Introduction of a new provision for requesting transactional data from platform providers, etc. A new provision would be codified under the Customs Act to provide a legal framework to obtain transactional data from platform providers, etc. with respect to cross-border electronic commerce businesses. Such data could be requested by the Commissioner of Korea Customs Service or heads of customs offices for purposes of expedited customs clearance, customs collection and effective monitoring as well as enforcement of customs administration. Cyber shopping mall operators including mail order brokers would be required to submit the requested data including information on recipients of goods, traded goods, payment to the supplier, etc. The proposed new requirement would apply to imports declared on or after July 1, 2023.

Shortened due date for issuance of withholding tax receipts for employees hired on a daily basis. Currently, a withholding agent would be required to issue a withholding tax receipt on wage and salary income to an employee hired on a daily basis by the end of the month following the end of the quarter in which the date of payment falls. Under the Reform Bill, the due date for issuing the withholding tax receipt would be shortened to the end of the month following the month in which the date of payment falls.

New requirement for submitting transaction details of virtual assets. To help promote the effectiveness of virtual asset taxation, the Corporate Income Tax Law (CITL) would create a new provision that requires certain virtual asset service providers to submit transaction data on virtual assets. The covered providers would include qualified virtual asset service providers whose filing has been accepted according to Article 7 of the Act On Reporting and Using Specified Financial Transaction Information. The qualified virtual asset service providers would be required to submit a statement of transactions for corporations conducting the transfer or lease of virtual assets within two months after the end of each quarter.

Additional special case for the statute of limitations. Currently, even after the statute of limitations has expired, the original imposition may be revoked and a correction or other necessary measures may be issued to a person within one year from the date on which a decision or judgement prescribed in Article 26-2(6) of the Basic National Tax Law (BNTL) is made as final if the person falls under any of the following cases based on such decision or judgement: where the fact that the name of a person who actually carried on a business is verified, or where a substantive owner of domestic source income is verified. Under the Reform Bill, the special rule for the statute of limitation would also apply in the event where a substantive owner of property is verified based on a decision or judgment, etc. prescribed in Article 26-2 of the BNTL.

Adjusted scope of income exclusion for dividends through a reduction of capital reserve. Currently, dividends received by a domestic shareholder company through a reduction of the capital reserve of its domestic subsidiary according to Article 461-2 of the Korean Commercial Act shall be excluded from gross income of the domestic shareholder company (as an exception, a dividend from capital reserve that is treated as a taxable deemed dividend is included in gross income of the company). Under the Reform Bill, the dividends received through a reduction of the capital reserve above would be excluded from the gross income of the domestic shareholder company only to the extent of the book value of its shares in the dividend paying subsidiary.

Legislative Proposals to Adopt Global Minimum Tax Rules

The Reform Bill includes a package of legislative proposals for global minimum tax rules. The government's proposals are aligned with the Global Anti-Base Erosion Model Rules (Pillar Two) released by the OECD in December 2021. Under the government's legislative proposals, where an MNE group (subject to the global minimum tax rules) is liable for an effective tax rate which is below the 15% minimum rate in a particular jurisdiction, a constituent entity in Korean may be liable to pay a corporate income tax in an amount equal to its allocable share of the top-up tax of the low-taxed constituent entity in Korea for a fiscal year. The Government aims to implement the proposed rules in January 2024, taking into account global legislative developments and trends to adopt the global minimum tax rules.

The Reform Bill introduces key points of the global minimum tax rules in the LCITA this year. In order to set out further details, the government plans to amend the Presidential Decree and the Enforcement Rules of the LCITA next year, with the aim of addressing technical issues of the Model Rules and the explanatory Commentary released by the OECD and discussion results of the OECD/G20 Inclusive Framework. Provided below is a brief summary of key areas of the legislative proposals.

Scope and taxpayers. The proposed rules would apply to constituent entities (with exceptions) that are members of a multinational enterprise (MNE) group that has annual revenue of EUR 750 million or more in the consolidated financial statements of the ultimate parent entity in at least two of the four fiscal years immediately preceding the tested fiscal year. A domestic constituent entity, that is the ultimate parent entity of an MNE Group, located in Korea would be primarily responsible for paying tax. As an exception, a partially-owned intermediate parent entity where more than 10% interest is directly and indirectly held by a third party outside the group, etc. might be liable for paying tax. A domestic constituent entity, where applicable, would be obligated to pay as corporate income tax an additional top up tax allocated in accordance with the income inclusion rule (IIR), etc. as detailed in the LCITA.

Location: Location of an entity for the purpose of applying the proposed rules would be the jurisdiction where the entity is a tax resident or is established. For a flow-through entity (which is a tax transparent entity with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located), the flow-through entity would be treated as having no country in which it is located, or as being located in the country of incorporation. The location of a permanent establishment would be determined considering tax treaties, etc.

Effective tax rate and additional top-up tax: The effective tax rate would be calculated for each jurisdiction as the sum of (i) the 'adjusted covered taxes' divided by (ii) the 'net global anti-base erosion (GloBE) income' (with exclusions for certain entities such as investment funds, etc.) where: (i) the 'adjusted covered taxes' of a constituent entity for a fiscal year are computed by the current tax expense accrued in its financial accounting net income or loss with respect to the covered taxes (e.g., taxes recorded in the financial accounts of a constituent entity with respect to its income or profits) for the fiscal year adjusted by total deferred tax adjustments, etc., and (ii) the 'net GloBE income' is the sum of GloBE income and GloBE losses of all constituent entities located in the jurisdiction as computed by the financial accounting net income or losses for the constituent entity for the fiscal year in preparing the consolidated financial statements of the ultimate parent entity according to the accounting standard, adjusted for adjustment items such as net tax expenses, excluded dividends, etc. Also, additional top-up tax for the jurisdiction for the fiscal year is computed in accordance with the following formula: additional top-up tax = [(minimum rate – effective tax rate for the jurisdiction) x (net GloBE income – substance-based income exclusion*) + additional current top-up tax – qualified domestic top-up tax**]. **The substance-based income exclusion for a jurisdiction is the sum of the payroll carve-out and the tangible asset carve-out for a constituent entity in that jurisdiction multiplied by a certain percentage (5%). **It refers to undertaxes paid in the jurisdiction in which the entity is located where the effective tax rate is below the minimum rate of 15%.*

Filing and payment: The proposed rules would come into force for fiscal years beginning on or after January 1, 2024. Filing a tax return and payment of tax would have to be made within 15 months after the end of a fiscal year (18 months after the end of the fiscal year for which the first filing is made). In the case of corporations with fiscal year ending on December 31, the proposed rules would apply from the fiscal year 2024, while they would be obligated for the first time to file and pay tax no later than June 30, 2026.

Proposed Changes to International Tax Affairs

Proposed changes to the CFC regime: The Reform Bill proposes several changes to the controlled foreign company (CFC) regime that include:

- Currently, the undistributed earnings of a CFC located in a low-tax jurisdiction with an average effective income tax rate (as determined under the LCITA) equal to or less than 70% of the top marginal corporate income tax rate of 25% at present *(i.e.,*17.5%) are taxed as deemed dividends to the Korean resident shareholder owning the CFC if certain requirements are met. As the top marginal corporate income tax rate would be lowered from 25% to 22% under the Reform Bill, the effective tax rate for the purpose of applying the CFC rules would be lowered to 15.4% from 17.5% accordingly.

- Currently, the CFC rules do not apply in cases where a foreign subsidiary has fixed facilities (e.g., office, factory) in a low-tax jurisdiction for the conduct of business, it manages or controls the business by itself, and the business is mainly performed in the jurisdiction. Even in this case, however, where passive income (e.g., income arising from stocks or bonds held by a CFC) accounts for more than 5% of gross income of the CFC, the CFC rules shall be applicable. In calculating the amount of passive income, gain or loss from the sale of ships, aircraft, and equipment directly used in a CFC's business is currently excluded. In this context, the Reform Bill would additionally exclude gains or losses derived from the disposal of stocks and bonds held by a CFC for the conduct of its business in a financial or insurance industry sector in calculating the passive income.

Change to application procedures for treaty exemption. To claim withholding tax exemption under an applicable tax treaty, a non-resident or a foreign corporation which is a substantive owner of Korean source income is required to provide the payor of income with an application form for an income tax treaty exemption, together with the residence certificate attached. The payor of such income must file those documents with the Korean tax authorities. In connection with this, it would be required to provide additional documents relating to the incorporation of a foreign corporation, business and domestic source income of a non-resident or a foreign corporation. In addition, the Reform Bill would allow the head of a district tax office to make a decision or correction in the event of failure to meet requirements for claiming treaty benefits or inconsistency between the description claimed and the facts. The head of tax office would make a decision/correction if the requirements for non-taxation, etc. are not complied with or the contents of the application are different from the facts. If it is infeasible to determine whether the requirements are met, the head of a district tax office may request the supplementation of documents, while the payor would be able to request a non-resident or a foreign corporation to provide supplementary documents

Additional document request to foreign liaison offices. Currently, liaison offices of foreign corporations are required to submit information on their operations including an overview, employees and operating funds of the liaison office, domestic transactions, domestic entities and branches of their foreign head offices. In addition to these documents, an aggregated summary of input tax invoices would be added to the list of requested documents under the Reform Bill.

Additional exemption from the submission requirement for international transaction documents. Taxpayers conducting cross-border transactions with overseas related parties are required to submit prescribed documents including a statement of international transactions, a summarised income statement of an overseas party and a report on arm's length pricing methods. However, the taxpayers would be exempt from the submission requirements if they meet certain conditions prescribed in Article 16(2) of the LCITA (e.g., a Master File and a Local File are submitted). In this context, the Bill would expand the exemption from the submission requirements to additional cases where: i) (a statement of international transactions) the total amount of transactions of goods, services or intangible assets with overseas related parties is KRW500 million, KRW100 million or KRW100 million or less, respectively; ii) (a summarised income statement of an overseas related party), transactions of intangible assets with overseas related parties which amount to KRW200 million or less; and iii) (a report on arm's length pricing method) the total amount of intangible asset transactions is KRW1 billion or less or transactions of intangible assets with an overseas related party is KRW200 million or less.

New penalty for non-submission of transaction documents for hybrid financial instruments. To enhance the effectiveness of the reporting requirement for transactions of hybrid financial instruments, new penalties are proposed for non-compliance with the requirement for submitting certain documents (i.e., a statement of adjustments to interest expenses concerning hybrid financial instruments). The proposed penalties would be: up to KRW30 million per instrument for failing to submit a statement of adjustments to interest expenses; KRW20 million for failing to comply with the requirements by the due date per hybrid financial instrument; and KRW10 million for incorrect reporting per hybrid financial instrument.

Other Proposed Measures

Additional case for filing of amended return for customs duties overreported. Under the Customs Act, a taxpayer is allowed to file an amended return for a refund request of customs duties overreported and overpaid. In addition, it is proposed that a taxpayer would be allowed to file an amended return for a correction request of customs duties overreported even before a payment is made.

Secondary tax liability aimed at preventing tax evasion through a foreign company. Currently, the secondary tax liability of companies shall arise if a company with the primary tax liability (the primary taxpayer) is unable to fulfill its tax obligations where no person wishes to purchase the stocks or investment securities of the primary taxpayer or where the transfer of shares or interest owned by the primary taxpayer is restricted by law or the articles of incorporation (excluding where a public sale is not feasible). The Reform Bill aims to help prevent tax evasion through a foreign company, proposing that the secondary tax liability would also arise where shares (or interest) owned by the primary taxpayer are those issued by a foreign company and the procedures for disposition of taxes in arrears, such as seizure or forced charges, are restricted by the National Tax Collection Act as those shares fall under foreign property situated in a foreign country.

Extension of retention period for offshore transaction documents. In general, taxpayers are required to keep and retain books and evidential documents related to all transactions for five years after the expiry of the statutory due date of tax return filing. The retention period would be extended to seven years with respect to offshore transactions, given that the statute of limitations is seven years in respect of international transactions.

New requirement for retention of transfer pricing related documents in a domestic place. In the context of retention requirement for books and evidential documents related to all transactions, the Reform Bill would require taxpayers to keep and retain transfer pricing related documents in a domestic place. The covered documents would include an organizational chart, work allocation table, copies involving asset sale and purchase agreements and others specified in Article 16(4) of the LCITA and Article 38(1) of the Presidential Decree of the LCITA. The retention place would be the place of tax payment (stipulated in relevant tax law) or a place designated by the NTS Commissioner.

Additional exception to control premium valuation for the largest shareholder, etc. Under the Inheritance and Gift Tax Law (IGTL), shares held by the largest shareholder and its related parties (the largest shareholder, etc.) shall be calculated by adding a 20% premium to the share value of the company valuated in accordance with the IGTL ('control premium valuation') with some exceptions. Exceptions apply to six kinds of cases, including where a company subject to share valuation had tax losses consecutively for the preceding three fiscal years per the CITL, etc., as specified in Article 53 of the Presidential Decree of the IGTL. In this context, the exception would also apply to shares issued by any company which does not belong to a business group subject to limitations on cross shareholding under relevant law (currently, this exception applies only to shares issued by an SME).

Introduction of purchaser-issued tax invoices. The Reform Bill would introduce a new regime for the issuance of tax invoices for the supply of tax-free goods or services under the CITL. The new regime would allow a purchaser (or a recipient) of goods or services to issue a tax invoice if confirmed by a district tax office in case tax invoices are not issued by a supplier for the supply of tax-free goods or services. Currently, if confirmed by a district tax office, purchaser-issued VAT invoices may be issued for the supply for VAT-leviable goods or services under the VAT Law. The proposed change will apply to the supply of goods or services on or after July 1, 2023.

Exemption from the requirement for interim corporation tax return filing and payment. A domestic corporation which is an SME with an interim tax payment of less than KRW 300,000 is currently exempt from the interim corporate tax return filing and payment requirement. The exemption threshold would increase to KRW500,000.

Rationalization of income deduction for SPC, PFV, etc. Where a special purpose companies (SPC) of asset-backed securitization, a project finance vehicle (PFV) or other domestic company falling in any of the prescribed categories in Article 51-2 of the CITL (*i.e., Income Deduction for SPC*) distributes at least 90% of distributable profits*, the equivalent amount of such distribution shall be deducted from taxable income of the SPC, etc. for a relevant fiscal year ('income deduction'). *(*calculated by net income plus retained earnings carried forward after subtracting losses carried forward and legal reserve.*) Under the Reform Bill, an excess amount of dividend payments over the taxable income amount for a fiscal year can be carried forward and be deducted for up to five years. In addition, the income deduction would first apply to the excess dividends carried forward, rather than the current year's dividends, for the respective year. The income deduction for dividend payments made by PVF is currently scheduled to be terminated at the end of December 2022. Under the Reform Bill, the income deduction would be applicable until the end of December 2025, a three-year extension of the current sunset.

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