Tax News Flash

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Government's Bill to Amend Presidential Decrees of Tax Laws

The Ministry of Economy and Finance (MOEF) has announced a government bill proposing amendments to the Presidential Decrees of tax laws (the 'Bill'). This follows the amendment of tax laws at the end of December 2024. The Bill, announced on January 16, 2025, seeks public comments until February 5, 2025. The final version of the Bill will be proclaimed at the end of February 2025 after being finalized in a cabinet meeting. If approved, most of the proposed amendments will take effect from the date the amended rules are proclaimed or from the fiscal year in which the effective date falls, unless otherwise specified.

Individual Income Tax Law (ITL)

New Provision for Non-Taxable Amount and Resale Prohibition Periods for Non-Taxation of Employee Discounts

Under the recently amended Individual Income Tax Law (ITL), new provisions have been introduced regarding non-taxable employee discounts. Specifically, when a company provides certain discounts to 'its executives or employees (including those of its affiliated companies under the Monopoly Regulation and Fair Trade Act)' (the 'employees') for the purchase of goods or services produced or supplied by the company, these discounts are classified as taxable employment income. The amended ITL further provides for non-taxation of employee discounts up to a certain limit for goods and services purchased by employees for their own personal use, provided that these items are prohibited from being resold for a specified period. The Bill proposes that the non-taxable discount amount for each employee is limited to (i) 20% of the total fair market value of all goods and services purchased by the employee annually or (ii) KRW 2.4 million per year, whichever is larger. Furthermore, for certain categories of goods such as cars, luxury home electronics, and high-value items specified under the Individual Consumption Tax Law, as well as goods with a useful life exceeding five years according to the Criteria for Settlement of Consumer Disputes, a non-resale period of two years is required to qualify for the non-taxation. For all other goods, a non-resale period of one year is required to qualify for the non-taxation.

Types of Employee Discounts Considered as Employment Income and the Method for Determining Fair Market Value

The proposed Bill specifies the types of employee discounts that qualify as employment income ('qualified employee discounts'), which shall include cases where a company sells goods or services produced or supplied by itself to employees at a price lower than the fair market value, provides financial support to the employees who intend to purchase goods or services produced or supplied by the company, or provides financial support to the employees who intend to purchase goods or services produced or supplied by an affiliated company. Additionally, if an affiliated company sells goods or services to an employee of the company at a price lower than the fair market value, and the company reimburses the affiliated company for the discounted amount provided to the employee, this is also considered an employee discount. For this purpose, the fair market value of goods or services would be determined in accordance with Article 89 of the Presidential Decree of the Corporate Income Tax Law (CITL). As an exception, if it is impossible to sell these items to the general public (e.g., damaged or deteriorated products, accommodation vouchers and boarding passes that cannot be sold to consumers due to their imminent expiration date) or if it is difficult to sell to anyone other than the employees, the discounted price can be considered as the fair market value.

Corporate Income Tax Law

Clarification of the Scope of Income and Deductible Expenses For Employee Discounts

The recently amended ITL provides guidance on non-taxable qualified employee discounts considered as employment income. In line with the amendment, two changes are proposed to the Presidential Decree of the CITL, aimed at rationalizing the taxation of employee discounts. One of the proposed changes would include qualified employee discounts in the scope of gross income in Article 11 of the Presidential Decree of the CITL. Currently, the scope of gross income includes the amount of business income generated from each business prescribed in the Korean Standard Industrial Classification, excluding the amount of sales discounts. However, it is proposed to include employee discounts provided by a company to its executives or employees for goods or services in the scope of gross income in this Article. Additionally, the Bill proposes to include in a company's deductible expenses the amount of qualified employee discounts provided to the company's executives or employees on goods or services, as well as the amount of reimbursement provided by a company to its affiliates which provided discounts to the company's executives or employees.

Streamlining the Application Procedures for Income Tax Treaty Exemption

To claim an exemption from withholding tax under an applicable tax treaty, a non-resident or a foreign corporation which is a beneficial/substantive owner of Korean source income is required to provide the payor of income (or withholding agent) with an application form for an income tax treaty exemption, together with a residence certificate issued by a competent authority. Also, where the amount of tax exemption being claimed is KRW 1 billion or more, it is required to submit additional evidential documents supporting the beneficial/substantive ownership, which shall include information on the board of directors and shareholders and auditor's reports for the latest three (3) years that the foreign corporation submitted in the country of its residence, among other documentation required under the CITL. The proposed Bill would expand the scope of acceptable evidential documents to tax returns, financial statement and supplementary documents, other than auditor's reports. The proposed Bill would also mandate the submission of both Korean and English versions of the relevant evidential documents. However, if approved by the Commissioner of the National Tax Service, the submission of an English version only would be permitted on a case-by-case basis.

Inheritance & Gift Tax Law

Expanded Scope of the Deemed Gift Rule to Foreign Corporations.

Under the proposed Bill, the scope of the deemed gift rule, which currently applies to domestic corporations, is set to expand to include foreign corporations. Currently, in case where a controlled corporation prescribed in the Inheritance and Gift Tax Law (IGTL) receives benefits through transactions with related parties of its controlling shareholder, such benefits are considered gifts to the controlling shareholder of the controlled corporation if certain conditions are met under the IGTL. This deemed gift rule is in effect for domestic corporations in which the controlling shareholder, together with his or her relatives, directly or indirectly holds 30% or more of shares in the domestic corporations. The proposed Bill seeks to broaden the scope of this rule to include foreign corporations which meet the same ownership criteria.

Special Tax Treatment Control Law (STTCL)

Clarification of Activities Excluded from the Scope of Research and Development (R&D)

The recent amendments to the Special Tax Treatment Control Law (STTCL) provide a more precise definition of Research and Development (R&D) eligible for tax incentives. Specifically, R&D is characterized as systematic and creative activities aimed at achieving scientific and technological advances. Previously, the definition was broader, encompassing any activities aimed at achieving scientific and technological advances. According to the amendments, the Bill would exclude activities from qualifying as R&D under the STTCL which simply complement, modify, or improve commercialized products, technologies, services, designs, etc. This is in addition to the existing exclusions, which include general management and support activities, market research, promotional activities, routine quality testing, and repetitive information gathering activities, etc.

Adjusted Scope of Businesses Ineligible for SMEs and Middle-Scale Companies

The STTCL provides a wide range of tax incentives designed to support qualifying small and midsize enterprises (SMEs) and middle-scale companies. To qualify as SMEs and middle-scale companies, a company should not be engaged in ineligible businesses prescribed in the Presidential Decree, including consumption-oriented service businesses (e.g. hotels), among others. The Bill would broaden the scope of ineligible businesses to include the real estate rental business and certain small corporations subject to the good-compliance verification scheme. To be classified as ineligible under the Bill, such small corporations must: i) have more than 50% of their shares held by controlling shareholders together with related parties; ii) engage in real estate as its primary business activity, or derive 50% or more of its total revenue from real estate rental, interest, and dividends; and iii) employ less than five full-time employees.

New Provision for Grace Period for Application of R&D and Investment Tax Credits

When applying the R&D tax credit and the integrated investment tax credit, if a company no longer qualifies as a SME, the recent amendments to the STTCL mandate adjusted credit rates, which are between the rates applied to SME and middle-scale companies, shall be applied for a grace period of three years after the transition from SME status to middle-scale company status. As the specific conditions under which a company no longer qualifies as an SME are delegated to be determined by the Presidential Decree of the Law, the Bill provides for the specific timing as follows: 1) three-year grace period if a company exceeds the SME criteria in terms of scale before the tax year that includes December 31, 2023; 2) five-year grace period (seven years for SMEs listed on the Korea Stock Exchange or the KOSDAQ) if a company exceeds the SME criteria in terms of scale in the next year following the tax year that includes December 31, 2023; and 3) three-year grace period in the event of graduation due to the amendment of the Enforcement Decree of the Framework Act on Small and Medium Enterprises.

Improvement in the Valuation Method for Tax Credit for Acquisition of Shares in Technology-Innovative SMEs

Domestic companies that acquire at least 50% of the shares in a technology-innovative SME (or 30% if acquiring with management rights control) are entitled to a tax credit equivalent to 5% of the technology value of the acquired company. The technology value can be assessed using either the direct or indirect method. The direct method involves summing the valuation amounts for patents and other rights as assessed by an accredited technology evaluation agency. The indirect method determines the value based on the purchase price minus 120% of the fair market value of the acquired company's net assets. The Bill proposes to eliminate the indirect method. This change will apply to the first share acquisition occurring on or after the effective date of the amended Presidential Decree.

Adjusted Scope of Rental Purpose Assets Ineligible for Integrated Investment Tax Credit

The recently amended STTCL stipulates those assets used for rent, as specified by the Presidential Decree of the Law, shall be ineligible for the existing integrated investment tax credit. The Bill proposes to exclude from qualified assets those assets which are acquired for the purpose of leasing to others (including leases by rental businesses), rather than for direct use in one's own business.

Additional Sectors Eligible for Tax Incentives in Special Opportunities Development Zones

Tax incentives for business startups in special opportunities development zones have traditionally been limited to certain industries such as manufacturing, R&D services, other science and technology service businesses, and power generation businesses using new and renewable energy. The Bill proposes to expand the eligibility for such tax credits to include two additional categories of businesses: those supplying new and renewable energy to businesses, and those supplying natural gas to businesses.

Law for Coordination of International Tax Affairs (LCITA)

Additional Document for Tax Refund Request based on Arm's Length Price Adjustments

In international transactions between a Korean resident (including domestic corporation and domestic place of business) and its foreign related parties, where the transaction price is lower or higher than an arm's length price, the LCITA allows the resident to submit an amended tax return for a tax refund request, along with a statement on the adjustment of transaction prices, to the competent tax office by seeking an adjustment of the transaction price to the arm's length price. When filing a tax refund request in such cases, the tax authority may require the taxpayer to submit various documents such as the organizational chart and a table of roles and responsibilities of the Korean resident and/or its foreign related parties, information on the current status of cross-shareholdings with related parties, and internal guidelines for pricing applicable to international transactions among the related parties.

The Bill proposes to expand the scope of documents that the tax authority may request where taxpayer files a tax refund request based on transfer pricing adjustments. Additional documents that may be requested for submission include segmented profit and loss statements and segmented financial statements by international transaction for each party involved.

Adjusted Scope of Companies Not Subject To the Interest Deduction Limitation Rule

Generally, taxpayers can deduct interest expenses paid or accrued in the taxable year. However, interest expenses that exceed a certain deduction limits cannot be considered deductible expenses. Articles 54 and 55 of the Presidential Decree of the LCITA provide non-deductible interest expenses, which include the amount of interest expense exceeding 30% of the taxpayer's adjusted taxable income for the taxable year (the 'interest deduction limitation rule').

Currently, the interest deduction limitation rule would apply to domestic corporations having borrowings from overseas related parties, with exceptions to financial institutions such as banks and insurance companies under the Korean Standard Industrial Classification including financial holding companies and general holding companies. Under the Bill, while financial holding companies would continue to not be subject to the interest deduction limitation rule, general holding companies would be subject to disallowance of interest expenses under this limitation rule.

New Provision to Clarify the Scope of Automatic Exchange of Information on Crypto Assets, Etc.

The recently amended LCITA has established legal grounds for the implementation of the Automatic Exchange of Information on Crypto-Assets (CARF), and the scope of information, reportable crypto-assets and reportable transactions have been delegated to the Presidential Decree. Under the Bill, a new provision is proposed to specify the scope of financial information on financial transactions (including the name of an account holder, country of residence, taxpayer ID, account number and amount) and crypto-asset transactions (including the name of a crypto-asset user, country of residence, taxpayer ID and total amount of crypto-asset transactions). Also, the Bill proposes to add qualifying crypto-asset service providers in the scope of financial service transaction companies. Furthermore, the Bill clarifies the scope of the reportable crypto-asset transactions to include exchange and transfer transactions, and the scope of the reportable crypto-assets to exclude electronic currencies issued by Central Bank, certain digital currency products among others.

Adjusted Penalties for Non-Compliance with the Submission Requirements for International Transaction Documents

Currently, penalties ranging from KRW 5 million to KRW 200 million are imposed for failure to comply with the requirements for submitting international transaction-related documents. Specifically, a penalty of KRW 30 million per report is levied for non-submission or false submission of comprehensive report on international transactions. Additionally, penalties of KRW 5 million per foreign related party are imposed for non-submission or false submission of statements of international transactions. Failure to submit such documents or comply with correction requests is subject to a maximum of KRW 200 million in penalties. Penalties may be increased or decreased by up to 50% considering factors such as the frequency of violations, the severity, motive, and consequences of the violation. In this context, the Bill proposes specific criteria for increasing or decreasing penalties as follows:

- a 30% increase for violations for the same reason within the last two years,
- a 50% increase for violations for the same reason for the third time within the last three years,
- a 20% reduction for the voluntary payment of fines before the deadline for submitting an opinion, and
- a 50% reduction for the submission of documents by the deadline, but with partial omissions or deficiencies.

Streamlining Guidelines for Imposing Penalties for Non-compliance with Foreign Financial Accounts Reporting Requirements

The proposed amendments to penalties for non-compliance with foreign financial accounts reporting requirements include:

- Adjusting penalty rates for non-reporting and under-reporting to a flat rate of 10%, rather than progressive rates from 10% to 20%. The cap on penalties would be lowered from KRW 2 billion to KRW 1 billion. Additionally, it would be stipulated that penalties should be based on the total sum of non-reported or under-reported amounts.
- Lowering the penalty rate for insufficient or false explanations from 20% to 10% of the violation amount.
- Specifying the criteria for increase and decrease in penalties in the Presidential Decree as follows: (i) Increasing penalties by 30% or 50% for second or third and subsequent violations, respectively, and by 30% to 50% if illegal transfer or concealment of overseas assets is confirmed, and (ii) Decreasing penalties by 50% for simple non-reporting confirmed by other reported information or where some account information is confirmed through related party reporting or previous year's reported accounts.

Proposed Amendments to the Global Minimum Tax Rules

Under the Bill, changes are proposed to clarify certain definitions used in the domestic global minimum tax (GloBE) rules and to specify adjustments to consolidated revenues and methods for calculation of adjusted covered taxes under the LCITA among others. The proposals supplement the existing rules, including the following amendments:

Proposed Change to Top-up Tax Exemption under the Qualified Domestic Minimum Top-up Tax (QDMTT). Where a multinational enterprise (MNE) group qualifies for a QDMTT safe harbour in a jurisdiction where a constituent entity is located, the top-up tax payable in the QDMTT jurisdiction is deemed to be zero. A QDMTT that qualifies for a safe harbour must meet the following three conditions:

- (Accounting) A QDMTT must be computed based on the ultimate parent entity's accounting standards or recognized public accounting standards subject to certain conditions.
- (Consistency) The QDMTT computation results must be the same as the computation results required under the GloBE Rules.
- (Administration) The OECD peer review standards must be fulfilled.

Under the proposed Bill, the filing constituent entity is allowed to choose a top-up tax exemption in the QDMTT jurisdiction under the QDMTT safe harbour if all of the above conditions are met. This proposed change is intended to align with the OECD GloBE Model Rules.

A New Provision for the Application of the Transitional Safe Harbour Rules. For MNE groups not obligated to submit country-by-country reports, a new provision is proposed to address the method for applying the transitional safe harbour rules. Under the Bill, to qualify for transitional relief under the safe harbour rules, the constituent entity in the MNE group must file the GloBE Information Return that meets the following requirements:

- It must be prepared based on qualified financial statements.
- It must include the total revenue and pre-tax profit amounts that would have been included if subject to the country-by-country reporting obligation.

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