



TP News Flash

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2024 Key Proposed Amendments to Korean Transfer Pricing Regulations

Summary

This news flash aims to summarize the recently announced proposed amendments to Korea's tax regulations that may potentially impact multinational enterprises ("MNEs") doing business in Korea.

The proposed amendments to the Law for the Coordination of International Tax Affairs ("LCITA"), the Presidential Enforcement Decree ("PED") of the LCITA and the Basic National Tax Law ("BNTL") are intended to address the enforcement of submission of information requested by the tax authority and the associated penalties for non-compliance. Additional guidance is also provided on the documents and materials that should be submitted to the tax authority by taxpayers wishing to claim a tax refund in relation to transfer pricing.

Additional guidance on information to be submitted for tax refund claims

The proposed amendment lays out that when requesting a claim for tax refund arising from taxable income adjusted for arm's length transfer prices, documents that demonstrate the reasonableness of the transfer pricing method applied by the taxpayer should be submitted, including the financial statements segmented for the relevant transaction(s).

In the event that the taxpayer fails to submit such documents or the relevant tax office determines that certain information is missing, the tax office may request the submission of additional information within a period not exceeding 30 days. If the taxpayer fails to submit the additionally requested documents or information, the tax office can reject the claim for tax refund within 6 months from receiving the

request.

The intent behind this proposal is to reduce indiscriminate requests for tax refund and limit the tax authority's review to claims with clear evidence that support the arm's length nature of transfer prices.

If passed into law, the proposed amendment will be applicable to claims for tax refund made from the enforcement date of the law.

Penalty to enforce compliance with submission of requested information during a tax audit

Under the BNTL, taxpayers are required to cooperate in good faith to questions and requests for information from the tax authority. Failure to cooperate can lead to a fine. However, the fine cannot be repeatedly levied and is limited to KRW 50



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million, making it difficult to enforce taxpayer compliance. Some MNEs with headquarters based outside of Korea are unwilling to submit information requested by the tax authority and choose to pay the fine.

In order to enforce compliance, the proposal sets forth a daily fine of up to 0.3% of average sales revenue, or daily KRW 5 million in case that average sales revenue is not available or cannot be reasonably calculated. The amount may be reduced or waived, depending on the effort to comply by the taxpayer.

The purpose behind the proposed amendment is to enforce taxpayer cooperation and encourage the submission of information and documents requested by the tax authority. However, there may be debate over what information and documents are legally required to be submitted by the taxpayer versus what can be requested by the tax authority within a tax audit setting and whether the failure to comply with the latter can lead to a penalty for non-compliance.

The proposed amendment will be applicable to tax audits beginning on or after the enforcement date of the law.

Reduction/increase in penalty for failure to submit transfer pricing-related documents and information

In addition to the BNTL, the current LCITA also lays out a list of transfer pricing-related documents and information that can be requested by the tax authority. The failure to submit relevant documents and information can lead to a penalty, the amount of which may differ per item.

For the Local File/Master File/Country-by-Country Report, the penalty is KRW 30 million per report. For the Statement of Cross-Border Transactions, the penalty is KRW 5 million per overseas related party. The current regulation also specifies penalties of up to maximum KRW 200 million for non-compliance with subsequent submission requests from the tax authority, with a possible reduction or increase in penalty within 50% depending on the severity and number of incidents.

In order to improve the predictability of penalty amounts, the proposed amendment sets forth a reduction in penalties by 20% to 50% and increase by 30% to 50%, based on the number of previous violations and submission of requested information within the specified timeline.

The proposed amendment will be applicable to submissions made from the enforcement date of the law.

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