



Korean Tax Update

Samil Commentary

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MOEF Announces the National Tax Revenue Budget Bill and the National Tax Expenditure Plan for 2022

The Ministry of Economy and Finance (MOEF) announced on August 31, 2021 the government's tax revenue budget bill for 2022. The MOEF estimates that the national tax revenue in 2022 will increase by KRW 24.3 trillion to KRW 338.6 trillion, a 7.8% rise from the 2021 budget of KRW 314.3 trillion. This is due to expected increases in tax revenue with the economy showing signs of recovery with a rebound in business performance, private sector's consumption, investment, exports and imports. Specifically, corporate income tax revenue is expected to rise to KRW 73.8 trillion in 2022, a 12.6% increase from the 2021 budget. VAT revenue is expected to grow by KRW 6.7 trillion to KRW 76.1 trillion in 2022, a 9.7% rise from the budget for 2021. Among individual income tax items, the comprehensive income tax revenue is predicted to grow to KRW 20.8 trillion in 2022, a 26% increase from the 2021 budget. As an attachment to the 2022 Budget Bill, the MOEF also submitted on September 3, 2021 the national tax expenditure plan for 2022 to the National Assembly. The national tax expenditure plan includes an analysis of the three-year outcomes from tax exemptions, tax credits and income deductions granted under the respective tax law. The total amount of tax exemptions, etc. are projected to be KRW 59.5 trillion in 2022, a 6.4% increase from KRW 55.9 trillion in 2021. The expected increase is mainly due to enhanced tax incentives for investment in national strategic industrial technologies and an expansion of earned income tax credits, etc.



삼일회계법인

National Tax Administration Policy for the Second Half of 2021

The National Tax Service (NTS) announced on August 13, 2021 its tax administration policy for the second half of 2021. The policy aims to: i) diversify tax support to stimulate the economy; ii) foster a taxpayer-friendly environment to promote tax compliance in good faith; iii) improve the fairness of the tax system; and iv) strengthen the competency and roles of tax policies and tax administration. In order to effectively achieve these policy goals, the NTS plans to implement the following measures for the second half of the year:

- Support to accelerate economic recovery and ease the difficulties faced by people's livelihoods
- Reengineer the tax payment support service to improve service quality and invite public participation in selected tax administration policies to protect taxpayer rights
- Reaffirm continued and strict responses to major unfair tax evasion areas and lay the foundation for public trust in tax policies and tax administration through the integrity of the tax system and the legitimacy of taxation
- Prepare future strategies to preemptively respond to a changing environment in tax policy and administration

MOIS Pre-announces Legislation to Amend Local Tax-related Laws

The Ministry of Interior and Safety (MOIS) announced on August 11, 2021 a bill to amend local tax-related laws with expectations of submitting the finalized bill to the National Assembly no later than September 30, 2021. The Ministry's bill includes proposals to help recover from the economic crisis due to the COVID pandemic and revitalize regional economic activities. The bill also includes proposed changes to improve the efficiency of local tax policy and administration and rationalize the local tax assessment and collection system. Among other items, the Ministry's bill proposes to: i) extend and expand the existing reductions in acquisition and property taxes for medical institutions providing infectious disease care and treatment; and ii) extend the acquisition tax reduction for qualified mergers and spin-offs, etc. to help enhance the competitiveness of corporations. In addition, the bill will improve the acquisition tax base in a way to reflect the actual value of property acquired (rather than the value reported by the acquirer). Under the proposal, the starting date for calculating accrued interest, on a daily basis, on the refund of local taxes will be changed to the date following the tax payment date (from the date of filing a refund request). The proposed change is to be consistent with the rule for calculating accrued interest on the refund of national taxes.

MSS Announces Supplementary Measures for the Promotion of Venture Businesses

The Ministry of SMEs and Startups (MSS) has finalized its plan to supplement the existing measures to support venture businesses that would expand tax incentives for stock options. The plan has been prepared as part of its vision to help the country take a leap to one of four global powers of venture business. Implementation strategies of the plan focus on 12 major tasks aimed at strengthening the global competitiveness of venture businesses that would: 1) raise the non-taxable threshold for gains from exercising stock options granted by

a venture business (i.e. from KRW 30 million to KRW 50 million) and ease the requirements for the special tax treatment for stock options; 2) delete the existing sunset clause in the Act on Special Measures for the Promotion of Venture Businesses (the “Act”) that previously set the time limit until the end of 2027 and then reform the Act; 3) double the limit of credit guarantees for venture business based technologies (‘technology financing’) to KRW 20 billion; 4) create a global venture capital fund of KRW 1 trillion; and 5) consider new technology financing for climate action to promote venture investment in ESG (Environment, Social and Governance).

The focused tasks also include measures to expand the venture capital investment market that would: 6) expand incentives for the private sector’s investors in fund of funds and sub funds and permit in-kind investment in venture funds; 7) introduce the governance structure in the Silicon Valley model for venture capital funds; 8) create KRW 1 trillion in startup funds to invest in young startups operating for less than three years; and 9) exempt startup accelerators from value added tax on the supply of fund management services. In addition, in order to promote the exit market, the tasks would: 10) create new credit guarantees to finance M&A for technology innovation and expand M&A venture funds; 11) seek to expand tax benefits for M&A and strategic alliances of venture businesses; and 12) foster the secondary market for venture capital.

Financial Services Commission to Create a New Division to Supervise Virtual Asset Transactions

The government plans to increase resources in order to enhance the transparency of virtual asset transactions as the revised Act on Reporting and Using Specified Financial Transaction Information came into force in March 2021 in a year after it was revised in March 2020. As part of the plan, the MOIS and the Financial Services Commission (FSC) announced on August 28, 2021 a proposed amendment to the rule concerning the organizational structure in the FSC and its associated organizations including the Financial Intelligence Unit (FIU). Under the proposal, a new division will be created in the FIU to oversee virtual asset transactions. The new division will be dedicated to oversight of virtual asset service providers, improvement of the oversight system and legal compliance of virtual asset service providers with their anti-money laundering duties, as prescribed in the amended law. The increased resources will strengthen the FIU’s capacity for inspection and analysis with regard to virtual asset transaction information. The proposed amendment will become effective this September after being finalized through public hearings and approved in a Cabinet meeting.

Rulings Update

Whether the deemed income provision for non-business purpose loans to a related party under the Presidential Decree of the former CITL falls outside the scope delegated by the former CITL and should be nullified

Under Article 15 (*i.e.*, *Scope of Gross Income*) of the former Corporate Income Tax Law (CITL) (effective prior to the amendment on December 24, 2018), Article 15(1) provides that the gross income shall be the amount of profits or income generated by transactions which

should increase the net assets of a company, except for capital contributions and those as prescribed in the CITL. Also, Article 15(3) provides that matters necessary for the scope and classification, etc. of profits or income shall be prescribed in Article 11 of the Presidential Decree of the former CITL. According to Article 11, item 9-2(a) of the Presidential Decree (the 'deemed income provision of the Presidential Decree in question', effective prior to the amendment on February 12, 2019), where a non-business purpose loan made by a company to its related party is not collected without reasonable causes until the date when their special relationship is terminated, the concerned loan being treated as deemed income would be included in the scope of gross income in the year when the special relationship is terminated even though it would not increase the net assets of the company.

The issue in this case is whether the deemed income provision of the Presidential Decree in question for non-business purpose loans, which do not increase the net assets of the company, falls outside the scope delegated by the former CITL (Article 15 (1) and (3), and therefore should be nullified.

Regarding this, the Supreme Court ruled that it should be reasonable to view that matters delegated by Article 15(3) of the former CITL would include not only 'income' prescribed in Article 15(1) of the former CITL but also those being treated as deemed income for tax policy reasons for the imposition of income, etc. that could be sufficiently anticipated by taxpayers. The Court further ruled that since non-business purpose loans, which have not been collected by a company from its related party without reasonable causes until the date when their special relationship is terminated, would be in substance regarded as a waiver of debts and this provision of the Presidential Decree is used as the basis for the imposition of income to the related party for gains arising from the waiver of the loans not collected. Accordingly, the Court decided that the deemed income provision of the Presidential Decree in question for such tax policy reasons for the imposition of income would fall under the scope delegated by Article 15(3) of the former CITL. (*Daebeop2020du39655*, 2021. 7. 29.)

This ruling is considered meaningful in that it is the first decision by the Supreme Court confirming that the deemed income provision (i.e., Article 11, item 9-2(a)) of the Presidential Decree in question falls under the scope of the delegation by the former CITL as it clarified specifically the purpose of delegation by Article 15(3) to the Presidential Decree of the former CITL.

Whether a deemed acquisition tax liability would arise in case relevant real estate was acquired by a company after the status as the controlling shareholder in the company was established on the same day

According to Article 7(5) of the Local Tax Law, where a person becomes a controlling shareholder (i.e., a shareholder owning more than 50% of shares, including the ownership of the shareholder's related parties) by acquiring additional shares in an unlisted Korean company, in general, the controlling shareholder shall be deemed to have acquired properties (e.g. real property) of the Korean company and be subject to deemed acquisition tax on the property owned by the company in proportion to its shareholding ratio. In this regard, the controlling shareholder refers to those whose total stock held or total investment made in a company exceeds 50% of the total number of stocks issued by the company or

the total amount of investments in the company and who substantially exercise the shareholder rights over the company, according to Article 46(2) of the BLTL and Article 24(2) of its Presidential Decree.

The issue in this case is whether the deemed acquisition tax liability would arise in relation to the value of real estate acquired by a company issuing stock if the real estate was acquired after the status as the controlling shareholder in the company was established on the same day.

In its previous rulings, the MOIS interpreted that where the date when the deemed acquisition tax liability of the controlling shareholder arose and the date when relevant real estate was acquired were the same, the value of the relevant real estate should be included in the deemed acquisition tax base of the controlling shareholder (*Local Tax Policy Division of the MOIS-3055, 2012.9.27, etc.*). In this ruling, however, the Ministry replied that there would be no deemed acquisition tax liability on real estate if the acquisition of relevant real estate was made after the status as the controlling shareholder was established on the same day. (*Local Tax Policy Division of the MOIS-2064, 2021. 7.29.*).

This case is considered important in that in addition to a date, a particular point of time on the date when an event occurred was considered in determining whether the deemed acquisition tax liability on real estate would arise where the issuing company acquired the relevant real estate on the same day when the status as the controlling shareholder in the issuing company was established.

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