

# Newsletter

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*This newsletter is prepared and issued by Hanul Choongjung LLC on a bi-monthly basis and intended to provide foreign investors with an update on tax law changes in Korea and other related subjects of special interests to foreign investors. The information provided herein should not form a basis of any decision as to a particular course of action, nor should it be relied upon as a substitute for a detailed advice in individual cases.*

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## ■ Guidance on CbC Reporting Requirements/Transfer Pricing

The Korean tax authorities has adopted the requirement to submit CbC reporting in line with the recommendations by the Organization for Economic Co-operation and Development (OECD) following the implementation of the new transfer pricing rules requiring multinational companies in Korea to submit local files and master files on their cross-border transactions, which is effective for the fiscal year starting on or after January 1, 2016.

Under the new CbC reporting in Korean tax law, the Korean ultimate parent company of a multinational group whose consolidated revenue exceeds KRW1 trillion during the preceding fiscal year is required to file the CbC reporting within twelve months from the fiscal year end. The CbC reporting must include information on a multinational group's revenue in each country, profit or loss before income tax, etc.

As delegated by the tax law changes to set forth details on the CbC reporting requirements, the Ministry of Strategy and Finance ("MOSF") released its guidance, titled 'Notice 2017-5, CbC Reporting Obligations and Scope of Covered Entities' on March 21, 2017.

According to the guidance, the Korean ultimate parent company and the taxpayers whose ultimate controlling shareholder is established in a foreign country is required to submit the application for the information concerning the CbC Reporting obligator to the Korean tax authority within six months from the fiscal year end (e.g. by June 30, 2017 for the taxpayers having the fiscal year ended December 31, 2016).

Other key points of the Ministry's guidance include:

### ■ CbC Reporting Obligator

- In case the ultimate parent company is a domestic company or a resident of Korea, the CbC reporting obligator is the domestic parent company preparing the consolidated financial statements of a multinational group whose consolidated revenue exceeds KRW1 trillion during the preceding fiscal year.
- In case the ultimate parent company is a foreign company or a non-resident of Korea, the CbC reporting obligator is a Korean affiliated company of a multinational group whose consolidated revenue exceeds 750 million Euros (or equivalent) in the preceding fiscal year if any of the following conditions are met:
  - a. There is no obligation to submit a CbC report under the laws and regulations of the country where the ultimate parent company is established; or
  - b. There is no arrangement for the exchange of CbC report information between Korea and the country where the ultimate parent company is established.

### ■ Covered Scope of Entities

A CbC reporting obligator is required to prepare and submit a CbC report for affiliate companies which belong to a multinational group.

## ■ Kenya – Korea Income Tax Treaty

Effective April 3, 2017, the Kenya – Korea Income Tax Treaty came into force seven months after the National Assembly ratified the income tax treaty on September 7, 2016 and three years after both countries signed the income tax treaty in Nairobi, Kenya in July 2014.

The summary of the key provisions includes:

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- Korean taxes covered by the treaty include individual income tax, corporate income tax, special tax for rural development and local income tax in Korea. In case of Kenya, the covered tax includes income tax.
- A construction project constitutes a permanent establishment if it lasts for more than 12 months.
- The withholding tax rate on dividends is limited to 8% if the beneficial owner is a company (excluding partnership) that holds directly at least 25% of the shares in the company paying the dividends or 10% in other cases.
- The withholding tax rate on interest is limited to 12%.
- The withholding tax rate on royalties is limited to 10%.

Please note that for the above provisions, they take effect in Korea for the amount payable on or after January 1, 2018 in case of withholding tax at source. Also, please note that in respect of other taxes, the treaty takes effect for the taxable years beginning on or after January 1, 2018.

## ■ Mauritius – Korea Tax Information Exchange Agreement

The tax information exchange agreement signed between Mauritius and Korea took effect on April 13, 2017 after it was officially signed by both governments on August 18, 2016 and ratified by the National Assembly on March 2, 2017.

The tax information exchange agreement is intended for both countries upon request to mutually share and exchange information foreseeably relevant to the administration and enforcement of the domestic laws of both countries concerning taxes covered by the agreement.

Such information shall include information regarding the determination, assessment and collection of taxes covered by the agreement as well as the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

The covered taxes include taxes of every kind and description imposed by the Mauritius Revenue Authority and by the National Tax Service and the Customs Service of Korea.

In addition, the agreement allows representatives of the concerned authority of a contracting country to enter the territory of the other contracting country and interview individuals and examine records with the written consent of the persons concerned.

## ■ Tax tips

### ● Individual Income Tax Return Filing Requirement (due May 31, 2017)

All individuals in Korea are classified as either resident or non-resident for income tax purposes. A resident is a person having a domicile or residence in Korea for 183 days or more, or an individual having an occupation that would customarily require him to reside in Korea for 183 days or more, or an individual whose family accompanies him or her to Korea and who retains substantial assets in Korea.

Generally, residency is determined on a "facts and circumstances" test which should be evaluated on an individual basis. A non-resident is an individual who is not deemed to be a resident.

Residents, regardless of their nationalities, are subject to Korean income tax based on worldwide income including global income (employment income, business profits, dividend, pension, interest, rental, and other

income), severance pay and capital gains. However, under the revised Individual Income Tax Law, in the case where the period that a foreigner, who is a tax resident of Korea, has his address or abode in Korea does not exceed 5 years in aggregate during the past 10 years from the end of the concerned tax year, his/her foreign source income earned from January 1, 2009 shall be taxed in Korea only if such income is paid in Korea or such income is remitted into Korea.

A tax resident who has global income (including employment income, interest, dividend, and pension income), severance pay, or capital gains within a tax year is generally required to file an annual individual income tax return and pay taxes due on such income by May 31 of the following year, or prior to permanently leaving Korea. An expatriate who is deemed to be a nonresident is taxed only on Korean source income. A non-resident is not allowed to use all of the personal deductions granted to residents except for the basic deduction for him/herself. Domestic employers are required to withhold individual income taxes on the regular payments of wages and salaries to their employees.

The following tax table summarizes the individual income tax rates (progressive rate scheme):

Taxable income	Tax rates
Up to W 12 million	6.6%
Over W 12 million and up to W 46 billion	16.5%
Over W 46 million and up to W 88 million	26.4%
Over W 88 million and up to W 150 million	38.5%
Over W 150 million and up to W 500 million	41.8%
Over W 500 million (effective from FY2017)	44.0%

In addition to these tax rates, a local (provincial) income tax is levied at 10% on income tax liability.

## ● Annual Value Added Tax Refund Claim Filing Requirement for Liaison Offices

Under Article 107 of the Special Tax Treatment Control Law (STTCL), a foreign liaison office in Korea may apply for refunds of VAT paid on goods or service purchased on an annual basis in June every year.

However, the refundable VAT items are those related to the purchase of the following goods and services:

- (i) foods and lodging
- (ii) advertisement
- (iii) electricity and telecommunication
- (iv) office lease
- (v) purchase of building and structures for a liaison office
- (vi) repair of building and structures
- (vii) purchase or lease of office furniture and supplies

Any VAT payment relating to legal and accounting services, purchase of office car and entertainment expenses are not claimable for refunds by the liaison offices.

The Regional Tax Office reviews the tax return and decides the tax refund by December every year. The VAT refund rule shall be applied on a reciprocal basis between Korea and other foreign country. When the tax law of its head office in a foreign country does not provide VAT refunds to Korean liaison offices located in the foreign country, the tax authority in Korea would not refund to the Korea liaison office under this reciprocity principle.

## ■ Foreigner Expatriates Tips

We provide a few helpful tips on most frequently asked questions from foreigner expatriates involving statutory social insurance in Korea as below.

### ● Korean National Pension Refunds at Permanent Departure from Korea

Obligation to participate in the statutory national pension scheme in Korea and the possibility of withdrawal/refunds of contribution made into statutory national pension scheme in Korea upon permanent departure of an employee will vary depending on the employee's nationality and the social security agreements entered into between the countries (refunds of contribution made to statutory national pension in Korea is generally based on the "principle of reciprocity").

We can provide more information on eligibility by country upon request.

### ● Statutory Social Insurance Participation Obligation by Visa Type

Statutory social insurance participation obligation may vary depending on the visa type, which can be summarized by most common visa types of foreigners in Korea as below:

Visa type		Medical insurance	National pension	Unemployment insurance	Industrial Accident Compensation insurance	
D-2	Student 유학	statutorily required	NOT statutorily required	NOT statutorily required	statutorily required	
D-7	Expatriate 주재원		statutorily required	may elect to participate in the insurance at their discretion.		
D-8	Investment 기업 투자					
F-4	Overseas Korean 재외동포			NOT statutorily required		
D-10	Employment 구직					

*Please contact any of the following individuals with any inquiries or comments.*

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