



Providing Excellence In Client Services

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Newsletter

Bi-monthly Tax Newsletter of Horwath Choongjung LLC

Contents

- Tax News
- New Tax Rulings

This newsletter is prepared and issued by Horwath Choongjung LLC (Choongjung Accounting Corp.) 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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(You may find this newsletter and other items of interest at <http://www.crowehorwath.co.kr>)

■ Tax News

NTS Plans to Support Foreign Invested Companies

The National Tax Service (“NTS”) announced plans to support foreign invested companies operating in Korea reflecting the suggestions collected from the companies. Key contents of the plans are as follows:

■ Introduction of Simplified Advance Pricing Agreement (“APA”) Program

NTS plans to introduce simplified APA program which aims to alleviate burden of the foreign invested Small and Medium-sized Enterprises (“SME”) operating in Korea in tax audit preparation from 2015.

APA is an arrangement between a taxpayer and the NTS regarding application of transfer pricing methodology under which an arm’s length price of intercompany transactions with a foreign related party is determined. Taxpayers filing the corporate income tax returns in compliance with the agreed APA can reduce the risk from the tax audit on transfer pricing issues for 3 to 5 years.

APA is usually considered by large foreign invested corporations because it requires an in-depth review of NTS on nature of intercompany transactions, functions performed and risk taken by each of the parties, and determination of comparables. To prepare for this review of NTS, the applicant has to engage APA experts and wait for up to 2 years maximum for the review process to be completed.

Under the simplified APA program, however, foreign invested SMEs with annual revenue of KRW 50 billion or below will be allowed to apply for the APA with minimum documentation, and NTS will complete the review within one year from the submission date.

■ Tax Audit Guidebook for Foreign Companies

NTS announced its plan to provide new Tax Audit Guidebook in English for the foreign invested companies in Korea by re-editing the existing tax audit guidebook. The new guidebook elaborates tax audit and related appeal procedures protecting the taxpayers’ rights, and explain Mutual Agreement Procedures and APA. Hard copy of the book will be furnished to the taxpayers when a tax audit is performed, but it will also be available on the NTS website (English).

■ Allowing Direct Interview with the Head of Tax Audit

NTS has provided taxpayers with opportunities to meet up with the head of tax

audit department while tax investigation is conducted since October 2014. This allows taxpayers of direct communication with the head of tax audit department over various tax audit issues such as disagreements regarding transfer pricing methodologies between the auditor and the taxpayer.

Multilateral Agreement on Automatic Exchange of Financial Information

The representatives of the Ministry of Finance and Strategy (“MOSF”) signed a Multinational Competent Authority Agreement on Automatic Exchange of Financial Account Information which provides a new step toward greater transparency, at an OECD forum held in Berlin, Germany on October 29, 2014.

The Agreement, developed by OECD in cooperation with G20 countries, will facilitate tax authorities’ access to financial information and boost worldwide efforts to crack down on offshore tax evasion. MOSF will be able to exchange financial information with the countries that signed the Agreement from 2017.

■ New Tax Rulings

Tax Deduction of Bad Debt Expense for Intercompany Loans

When a domestic corporation (“Lender”), other than financial institutions, extended loans to other domestic corporation (“Borrower”), which is considered a related party to the Lender, the Lender is not allowed to recognize bad-debt expense for such intercompany loans for tax purpose even though the Borrower went bankrupt.

Under the tax ruling (Beobin beobkyu 2014-243, 2014.8.25), however, the Lender can deduct the bad-debt expense of the loans extended to a related party from its taxable income if the Lender and the Borrower were not a related party when the loan was initially extended.

Exclusion of Deemed Acquisition Tax on Entrusted Real Property

Under the Provincial Tax Law, the majority shareholders of private companies are subject to deemed acquisition tax at the time of acquiring more than 50% of the shares in the companies owning real estate, vehicles, etc. The deemed acquisition tax is imposed in proportion to the equity holding ratio.

When the legal titles of a real property is transferred from Trustor (corporation) to Trustee under a trust agreement, as a matter of formality, the owner of real

property shall be changed to Trustee from Trustor, but the real ownership of the property still remains with Trustor. As such, it was not so clear as to whether the deemed acquisition tax shall be assessed to the majority shareholders of Trustor (corporation).

According to the recent ruling of the Court (Supreme Court 2014 Du 36266, 2014.9.4), the deemed acquisition tax should not be imposed on the shareholders of Trustor (corporation) when he/she becomes the majority shareholder or when the majority shareholder's equity holding ratio increases after the ownership of real properties are transferred from Trustor to Trustee under the trust arrangement.

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