

Newsletter

May 2023

Bi-monthly Newsletter of Hanul LLC



Smart decisions. Lasting value.

Contents

- **Innovation Plan for Tax Audit Announced in May 2023**
 - NTS strive to minimize the burden of tax audits on taxpayers as much as possible
 - NTS committed to actively listening and providing precise and accurate information
 - NTS committed to implementing legitimate taxation through the utilization of collective intelligence

- **Important South Korean Tax Reporting Requirements Coming Due**
 - Guidance on CbC reporting requirements
 - Transfer pricing documentation requirements
 - Guidance on overseas financial account reporting

- **Individual Income Tax Compliance Tips**
 - 2022 individual income tax return filing due by May 31, 2023
 - RSU tax reporting requirements of employer and its employees in Korea

- **Statutory Social Insurance Update**
 - Max contribution ceiling of statutory national pension to increase effective from July 1, 2023

- **HR Tips**
 - Maternity leave
 - Childcare leave
 - Introduction of “3+3 joint childcare leave system” with increases in childcare leave pay

This newsletter is prepared and issued by Hanul LLC in Seoul, Korea on a bi-monthly basis and intended to provide foreign investors with an update on tax law changes in South 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.

Hanul LLC is a member of Crowe Global, a Swiss verein. Each member firm of Crowe Global is a separate and independent legal entity. Hanul LLC and its affiliates are not responsible or liable for any acts or omissions of Crowe Global or any other member of Crowe Global. Crowe Global does not render any professional services and does not have an ownership or partnership interest in Hanul LLC.

■ Innovation Plan for Tax Audit Announced in May 2023

On May 16, 2022, the National Tax Service (“NTS”), the Korean tax authority, made an announcement regarding innovative measures for tax audits. These measures are based on three core values: “relaxing the burden of taxpayers during tax audits,” “ensuring legitimate procedures,” and “promoting legitimate taxation.” The aim is to establish a tax audit system that is both legitimate and fair, resonating with taxpayers and garnering their sympathy.

● NTS strive to minimize the burden of tax audits on taxpayers as much as possible

Extension of the advance notification period

- To address concerns about taxpayers having insufficient time to prepare for tax audits adequately, NTS had decided to extend the advance notification period for small and medium-sized taxpayers¹ to 20 days (currently 15 days).

*1. Corporate taxpayers with annual revenue of less than KRW 50 billion and Individual taxpayers with annual revenue of less than KRW 10 billion

Decrease the duration of the on-site audits

- If a taxpayer’s accounting process is deemed transparent, their suspicion of evasion is low, and they actively cooperate in submitting the requested data, NTS will reduce the number of on-site tax audit days to 50~70% of the total tax audit period.

Rationalize the requirements for data submission

- To address concerns raised by taxpayers regarding the challenging nature of excessive data requests during tax audits, the following measures will be implemented.
 - 1) In principle, comprehensive data requests will be prohibited.
 - 2) NTS will systematically manage a list of data submission requests.
 - 3) Data will be requested to the minimum extent possible, ensuring a thorough review by managers to determine the essential information required.

● NTS committed to actively listening and providing precise and accurate information

Hearing for tax audit manager

- NTS will introduce a new initiative called the ‘Hearing for Tax Audit Manager’. This will provide an opportunity for direct communication between taxpayers and tax audit managers (i.e., Director or Director General). It aims to facilitate open dialogue, allowing taxpayers to express their opinions or discuss any difficulties they encounter during the tax audit process.

Brief session to inform a taxpayer about a tax audit result

- Within 20 days following the end of the tax audit periods, NTS will deliver a written report directly to the taxpayer. This report will encompass comprehensive details of the tax audit, including specific grounds for taxation, a breakdown of the audit finding, results of the review on the taxpayer’s explanation, and a thorough explanation of the available procedures for seeking relief or exercising their right.

● NTS committed to implementing legitimate taxation through the utilization of collective intelligence

Legality review meeting in advance of taxation

- To ensure thoroughness and accuracy in taxation, the NTS has introduced a legality review meeting prior to the implementation of taxation. This meeting involves the tax audit team, deliberation team (supporting the tax audit team’s decision-making), and expert group (where the Red Team exclusively represents the taxpayer’s position). During this meeting, independent and horizontal discussions take place, focusing on critical taxation issues that may deviate from the taxpayer’s perspective.

■ Important South Korean Tax Reporting Requirements Coming Due

● Guidance on CbC reporting requirements

The Korean tax authorities have adopted the requirement to comply with the country-by-country (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.

With the adoption of this CbC reporting requirement under the Korean tax law, a Korean taxpayer of a multinational group whose consolidated revenue exceeds the threshold prescribed by the relevant Presidential Enforcement Decree is required to file the CbC reports within twelve months from the fiscal year-end. The CbC reports must include information on a multinational group's revenue in each country, profit or loss before income tax, amount of tax payment, etc.

With regard to this, the Korean taxpayers (i.e., a Korean ultimate parent company, a taxpayer whose ultimate controlling shareholder is established in a foreign country) are 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, 2023, for the taxpayers having the fiscal year ended December 31, 2022).

Other key points of the government's guidance include:

a. CbC reporting obligator

The Korean ultimate parent company

In the case where 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 KRW 1 trillion during the preceding fiscal year.

The Korean affiliate of foreign ultimate controlling shareholder

In the case where the ultimate parent company is a foreign (non-Korean) company or a non-resident of Korea, the CbC reporting obligator is a Korean affiliated company of a multinational group whose consolidated revenue in the preceding fiscal year exceeds the threshold below.

- If there is an obligation to submit a CbC report under the laws and regulations of the country where the foreign ultimate controlling shareholder is established: the threshold prescribed by the laws and regulations
- If there is no obligation to submit a CbC report under the laws and regulations of the country where the foreign ultimate controlling shareholder is established: EUR 750 million (or equivalent)

The Korean affiliate that has submitted 'the application for the information concerning the CbC reporting obligator' may not submit a CbC report to Korean tax authorities if any of the following conditions are met:

- (1) There is an obligation to submit a CbC report under the laws and regulations of the country where the ultimate parent company is established and that CbC report is exchanged in accordance with the tax treaty with Korea; or,
- (2) Other Korean affiliates submit CbC report on behalf of the Korean affiliate; or,
- (3) The foreign ultimate company delegates the obligation of submitting CbC report to an affiliate in a third country and that CbC report is exchanged in accordance with the tax treaty with Korea.

b. Covered scope of entities

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

- Companies included in the consolidated financial statements of the multinational group
- Companies that are subordinate to the ultimate parent company of the multinational group, but excluded from the consolidated financial statements for the reason of size or importance
- Permanent establishments of the companies of the multinational group which prepare separate financial statements.

● **Transfer pricing documentation requirements**

Under the Korean International Tax Coordination Law (“ITCL”), a taxpayer (excluding a taxpayer required to submit a Master File and Local File) that conducts cross-border transactions with overseas foreign related parties (“OSRP”) shall submit the following documents to Korean tax authorities, within six months from the end of the fiscal year (e.g., by June 30, 2023, for the taxpayers having the fiscal year ended December 31, 2022).

- a. Schedules of international transactions (with OSRP) [Form No. 16]
- b. Report on the method of the arm’s length price determination [Form No.18, 19, 20]
- c. Summary Profit and Loss statement of OSRP [Form No.17]

● **Guidance on overseas financial account reporting**

Under the ITCL, if Korean resident individuals or domestic companies have financial accounts opened with overseas financial institutions and the total value of such accounts exceeds KRW 500 million on any last day of each month of the relevant year, such Korean residents and domestic companies are required to file a report on their overseas financial accounts with the Korean tax authorities from June 1 to June 30 of the following year.

For the purpose of reporting on overseas financial accounts, each of the following persons shall be deemed to hold the relevant foreign financial account:

- Where the actual holder of a foreign financial account is different from the nominal account holder, such as an account not under a real name: The nominal holder and the actual holder
- Where a foreign financial account is an account in joint names: Each joint holder

In the case where Korean resident individuals or domestic companies who are required to report their overseas financial accounts fail to report their financial accounts by the reporting deadline or underreport the relevant amount, an administrative fine shall be imposed as follows:

Non-reported or underreported amount (A)	Fine
Up to KRW 2 billion	(A) X 10%
Over KRW 2 billion up to KRW 5 billion	KRW 200,000,000 + [(A) – KRW 2 billion] x 15%
Over KRW 5 billion	KRW 650,000,000 + [(A) – KRW 5 billion] x 20% with the maximum cap of KRW 2 billion

In addition, if the non-reported or underreported amount exceeds KRW 5 billion, the Korean resident individuals or domestic companies that violated reporting requirements can be subject to imprisonment of up to 2 years or a fine equivalent to the amount between 13/100 and 20/100 of the amount of breach of an obligation to report.

■ Individual Income Tax Compliance Tips

● 2022 individual income tax return filing due by May 31, 2023

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 miscellaneous income), severance pay, and capital gains.

However, under the revised Individual Income Tax Law (IITL), 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.

Taxpayers making monthly tax payments and having only one source of worldwide income (i.e., either Class A or Class B) are generally not required to file a global income tax return since the employer (for Class A income earners) or the Class B taxpayers' association (for Class B income earners) finalizes the individual's tax liability at the end of the year for and on behalf of the employee concerned. Taxpayers having more than one source of income, however, are required to file a global income tax return for the year and pay taxes due on such income on or before May 31 of the following year, or prior to permanently leaving Korea.

The filing of 2022 annual individual income tax return is coming due by May 31, 2023 together with necessary tax payments.

● RSU tax reporting requirements of employer and its employees in Korea

Restricted Stock Unit (RSU) related tax treatment at company level as well as individual employee level can be summarized as below.

Korean company	Employees of Korean company
<p><u>At company level</u></p> <p>(1) If the RSU satisfies all 4 conditions listed below, such RSU costs shall be <u>deductible</u> for corporate income tax purpose in accordance with Article 10-2 of the Enforcement Decree of the Korean Corporate Income Tax Law:</p> <ul style="list-style-type: none"> a. The parent/affiliate company provides such RSU within 10% of its total issued and outstanding shares; b. There is a written agreement on charge-back of RSU costs between the parent/affiliate company and the Korean subsidiary company; c. The parent or an affiliate company is defined as a foreign(non-Korean) company listed on a domestic or foreign securities exchange, which holds not less than 90% of the shares in the Korean subsidiary company directly or indirectly; and 	<p><u>At individual employee level</u></p> <p>(1) Where employees receive RSU granted from the parent company/affiliated company and the RSU costs are <u>charged back to the Korean subsidiary company</u>, the related RSU income of employees shall be subject to monthly Korean payroll income taxes and payment obligations <u>at the time of vesting</u> (not at the time of grant). The employer as the withholding agent shall be obligated to withhold payroll taxes and report to the tax authorities together with regular payroll.</p> <p>(2) If RSU costs are <u>not charged back to the Korean company</u> or do not qualify for deduction for Korean corporate income tax purposes, the employees concerned shall be required to report such RSU income and pay income taxes thereon to the Korean tax authorities <u>voluntarily</u> either:</p>

Korean company	Employees of Korean company
d. In the case where a RSU recipient is a board member or a statutory auditor of the Korean subsidiary, their total annual compensation shall not exceed the ceiling amount as approved at the shareholders' meeting or at the board of directors' meeting. (2) If RSU does not satisfy all 4 conditions above, such RSU costs shall be treated <u>non-deductible</u> for corporate income tax purpose in Korea.	(i) through a taxpayers' association by the 10th day of following month of RSU vesting) (in which case 5% income tax credit with annual maximum cap of KRW 1.0 Million will be allowed) OR (ii) alternatively through filing annual global income tax return (종합소득신고 in Korean) which is due by May 31 of the following year (in this case, a 5% tax credit shall not be allowed). In this case, the employer shall not be obligated to withhold/report payroll taxes.
To be deducted <u>when RSU is vested</u> .	To be taxed <u>when RSU is vested</u> .

■ Statutory Social Insurance Update

● Max contribution ceiling of statutory national pension to increase effective from July 1, 2023

Effective from July 1, 2023, the monthly max contribution ceiling of the statutory national pension will increase from KRW 248,850 to KRW 265,500 each for employer and employee (Ministry of Health and Welfare (MOHW) of Korea announcement, March 6, 2023).

For your future reference, the statutory social insurance rates in effect from July 1, 2023 can be summarized as below:

Social Insurances:	Employee portion	Employer portion	Total	Remark
National Pension (NP)	4.5%	4.5%	9.0%	<u>Won 265,500</u> of monthly contribution ceiling each
National Health Insurance (NHI) a. Health Insurance (HI)	3.545%	3.545%	7.09%	<u>Won 3,911,280</u> of monthly contribution ceiling each (*) Assessed at 12.81% of HI premium above
b. Long-term Care Insurance for the Elderly (HI-LTCI)	12.81%	12.81%	12.81%(*)	
Employment Insurance (EI)	0.9%	1.15% ~1.75%	2.05% ~2.65%	Vary depending on the number of employees
Industrial Accident Compensation Insurance (IACI)	NIL	0.60% ~18.6%	0.60% ~18.6%	Vary depending on type of business

(NOTE)

- LTCI contribution is imposed based on the medical insurance premium (while NP, HI, EI, and IACI contributions are imposed based on monthly wage income reported in the prior year).
- Wage bond surcharge and asbestos victim relief surcharge of 0.6/1,000 and 0.03/1,000 should be added to IACI rates additionally. Commute-related injury surcharge is also assessed additionally at 1.3/1,000 regardless of the business type starting from January 1, 2020.

■ HR Tips

In addition to the traditional maternity leave and childcare leave benefits in Korea, the Korean government has newly introduced a “3+3 joint childcare leave system” as part of efforts to create a better environment for married couples on employment in raising their children and increase the birth rate in Korea effective from January 1, 2022.

● Maternity leave

An employer shall grant a pregnant woman a total of 90-day maternity leave (120-day maternity leave if she is pregnant with at least two children at a time) before and after childbirth. Provided, however, that at least forty-five (45) calendar days (60 calendar days of leave in case of pregnancy with multiple fetuses) of such maternity leave shall be used after childbirth. For the first sixty (60) days (75 calendar days of leave in case of pregnancy with multiple fetuses) of (90) calendar days of maternity leave (120 calendar days of leave in case of pregnancy with multiple fetuses), the Company shall pay the difference between the ordinary salary received from the Company before her maternity leave and the maternity leave pay received from the Korean Labor Welfare Corporation under the provisions of the Employment Insurance Act (that is, **KRW 2.1 million** per month effective from Jan 1, 2023), if such maternity leave pay received is less than the ordinary salary of Employee concerned. Even though the Company is not statutorily required to pay the difference for the third month of the maternity leave, we have seen that most foreign companies do choose to pay the difference even for the third month voluntarily.

● Childcare leave

Where an employee parenting his or her children (including adopted children; hereinafter the same shall apply) aged eight years or younger or in the second grade or lower of elementary school applies for a leave of absence (hereinafter referred to as "childcare leave"), his or her employer shall grant permission therefor provided that the same shall not apply to cases prescribed by Presidential Decree. The employees receive childcare leave pay from the government agency under the Employment Insurance Act for 80% of his/her ordinary wage up to **KRW 1.5 million** per month for three months from the first day of childcare leave. From the fourth month until the last day of childcare leave, the childcare leave pay reduces to 50% of his/her ordinary wage up to **KRW 1.2 million** per month. The government agency holds 25% out of the childcare leave pay during the leave period and will pay this withheld amount to the employees at the time when 6 months elapse from the date the employee returns to his/her work. During the childcare leave period, an employer does not have a legal obligation to pay salaries.

● Introduction of “3+3 joint childcare leave system” with increases in childcare leave pay

Effective from January 1, 2022, under this 3+3 joint childcare leave system, , if both parents on employment take their childcare leave concurrently or successively for the same child within 12 months of childbirth, the government has increased the childcare leave pay for both parents on employment for the first 3 months as summarized below (to be eligible to receive this increased childcare leave pay, the start date of childcare leave of the second parent taking successive childcare leave shall fall on January 1, 2022, or after).

Month	Cases	Before	From Jan 2022
1st to 3rd months	If only one of the parents takes childcare leave	- 80% of ordinary wage (up to KRW 1.5 million per month)	- Remain unchanged
	If both parents take childcare leave	- The first parent taking childcare leave: 80% of ordinary wage - The second parent taking childcare leave: 100% of ordinary wage (up to KRW 2.5 million per month)	- The first parent taking childcare leave: 100% of ordinary wage - The second parent taking childcare leave: 100% of ordinary wage (up to KRW 3 million per month for each parent as below) (1) 3 months for mother + 3 months for father: up to KRW 3 million per month for each (2) 2 months for mother + 2 months for father: up to KRW 2.5 million per month for each (3) 1 month for mother + 1 month for father: up to KRW 2 million
4th to 12th months	In either case	- 50% of ordinary wage (up to KRW 1.2 million per month)	- 80% of ordinary wage (up to KRW 1.5 million per month)

If parents use the 3+3 system for childcare leave, the childcare leave pay will be as follows.

(Unit: KRW)

	Father takes childcare leave for 1 month	Father takes childcare leave for 2 months	Father takes childcare leave for 3 months
Mother takes childcare leave for 1 month	Father: 2 million Mother: 2 million	Father : 2 mn + 1.5 mn Mother: 2 mn	Father : 2 mn + 1.5 mn + 1.5 mn Mother: 2 mn
Mother takes childcare leave for 2 months	Father: 2 mn Mother: 2 mn + 1.5 mn	Father : 2 mn + 2.5 mn Mother: 2 mn + 2.5 mn	Father : 2 mn + 2.5 mn + 1.5 mn Mother: 2 mn + 2.5 mn
Mother takes childcare leave for 3 months	Father: 2 mn Mother: 2 mn + 1.5 mn + 1.5 mn	Father : 2 mn + 2.5 mn Mother: 2 mn + 2.5 mn + 1.5 mn	Father : 2 mn + 2.5 mn + 3.0 mn Mother: 2 mn + 2.5 mn + 3.0 mn

In addition to the childcare leave pay increase for the first 3 months, the childcare leave pay for the 4th to 12th months of childcare leave will be raised to 80% of the ordinary wage (up to KRW 1.5 million per month).

Until 2021, the government agency held 25% of the childcare leave pay during the leave period and paid this withheld amount to the employee at a time when 6 months elapsed from the date the employee returns to his/her work. However, under the 3+3 joint childcare leave system, the 25% post-payment system is not applied starting from 2022.

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

KS Han, GS Sim, John Park or SY Lee at Tax & BPO Services

Hanul LLC

Member Crowe Global

Sindo Building, 10th Floor, 14 Teheran-ro 88-gil,

Gangnam-gu, Seoul 06179, Korea

TEL: (82)(2) 316-6600 FAX: (82)(2) 775-5885

E-mail: post@crowe.kr

Website: <http://www.crowe.kr>

(You may find this newsletter and other items of interest at <http://www.crowe.kr>)