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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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Proposed Tax Law Changes in 2017

On July 28, 2016, the Ministry of Strategy and Finance has announced tax law changes to be implemented from 2017. The proposed tax law changes will be finalized after the National Assembly passes the bill.

Previously, we had summarized the major tax law changes for 2017 in our September 2015 edition of Newsletter. In this edition, we introduce you additional tax law changes that will be relevant to foreign companies in Korea as follows:

■ Proposed Changes in Preferential Tax Treatment on Foreign(Non-Korean) Workers

Under the proposal, there are changes regarding the preferential tax treatment on foreign expatriates and employees working in Korea. The proposed changes will extend the existing 5-year time limit for the application of the flat tax rate which is scheduled to sunset as of December 31, 2016 by additional 3 years so that the flat tax rate will apply to those who will start to work in Korea no later than December 31, 2019. The proposed change will adjust the flat tax rate from 17% to 19% (excluding local income tax).

■ Limitation on Utilization of Tax Loss of Foreign Corporation in Korea

Currently, the tax losses of a foreign corporation (i.e., a Korean branch of a foreign corporation) can be carried forward to the next ten years. While the tax losses carried over from prior years that can be utilized by a domestic company in a year are limited to 80% of the company's taxable income in the year, there is no limitation on the utilization of the tax losses of a foreign corporation. It is proposed that a foreign company would be subject to the limitation on the amount of the tax losses to be utilized by the foreign company on an equal footing with domestic companies.

■ Requirement for Country-by-Country(CbC) Reporting

Under the tax proposal (not sanctioned yet), the Korean tax authorities will adopt 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 from January 1, 2016.

Under the proposed CbC reporting in Korean tax law, the domestic (Korean) ultimate parent company of multinational companies with annual sales revenue exceeding KRW 1 trillion per consolidated financial statements for the preceding year will be required to submit the CbC reporting to the Korean tax authority in addition to the master file and local files. The proposed CbC reporting requirement will apply to the year starting on or after January 1, 2017. It will also apply to the Korean subsidiary or Korean branch of foreign headquartered multinational companies in certain cases (e.g., in the case where the parent company of foreign(non-Korean) multinational company is located in a country that does not require the parent company to prepare CbC reporting or does not agree with the exchange of CbC reporting).

The proposed CbC reporting will need to include information on country specific income and taxes, a list of companies by respective jurisdiction, main business activities, the number of employees, etc.

The CbC reporting must be filed within 12 months after the end of the ultimate parent's income tax year. With respect to the submission of a local file and master file, the reform package includes changes to extend the due date for submission. Under the proposal, those files will need to be submitted within 12 months from the end of each fiscal year. Currently, they must be filed by the due date of filing annual corporate income tax return (i.e., within 3 months after the end of each fiscal year).

From 2018, the Korean tax authorities will exchange the CbC reports submitted according to the Multilateral Competent Authority Agreement on the Exchange of CbC reports (signed by Korea on June 30, 2016).

■ New Exit Tax Proposed for Korean Residents Immigrating to a Foreign Country

A new rule is proposed to apply a special tax treatment (so-called 'exit tax') to Korean residents who expatriate from Korea for reasons of immigration to a foreign country, etc. and satisfy all of the following conditions: i) having an address or domicile in Korea for at least five years during the 10-year period before the expatriation date, and ii) constituting a large shareholder subject to capital gains tax as prescribed in Article 157(4) of the Presidential Decree of the Individual Income Tax Law.

The proposed exit tax will be assessed at the rate of 20% on the unrealized capital gains on the Korean shares held by the residents immigrating to a foreign country as if the shares are sold on the day the immigration takes place. The assets subject to exit tax may be expanded later depending on the enforceability of exit tax. The Korean residents subject to the exit tax will be allowed to claim a foreign tax credit for the tax paid in a foreign country in case of actual share transfer or a tax credit where the value of shares at the time of actual transfer declines from the share price at the time of expatriation. The exit tax return filing, together with the tax payment will need to be made within three months from the end of the month when expatriation takes place. In case of non-filing, a penalty of 20% of the tax payable will be imposed. The payment of exit tax may be deferred for five years if certain requirements are satisfied including the pledge of collateral to guarantee the tax payment and the designation of a tax agent in Korea. If an expatriate returns to Korea within five years from the expatriation date to declare a tax residency, the paid exit tax will be refunded. The proposed exit tax will apply to expatriations occurring on or after January 1, 2018.

■ Expanded Scope of Korean Sourced Personal Service Income of Non-resident or Foreign Corporation

Income derived by a non-resident or a foreign corporation from the following categories of personal services are subject to 22% withholding tax (including local income tax at 10% of the income tax amount) in Korea if such activities are performed in Korea: i) activities performed by an entertainer, a professional athlete or a freelancer; or ii) activities performed by those who have professional knowledge and skill regarding scientific technology and management & administration, etc. by utilizing relevant knowledge and skill.

Changes are proposed so that the income derived by a non-resident or a foreign corporation in respect of technical services performed outside Korea will be treated as Korean sourced personal service income subject to Korean withholding tax if Korea's income tax treaty with a foreign country where the non-resident or the foreign corporation is a resident of allows taxation of the income in Korea (for example, the Korea-India income tax treaty). The withholding income tax rate will be set at 3% (exclusive of 10% local income tax (i.e., 0.3%) to be added on the income tax).

■ Extended Statute of Limitation for Tax Refund Request by Non-resident or Foreign Corporation

When a non-resident or a foreign corporation failed to apply for a reduced withholding tax rate allowed under the applicable income tax treaty, the non-resident or the foreign corporation may file a request for refund of overpaid withholding tax. The statute of limitation for such tax refund request will be extended from 3 years to 5 years from the end of the month when tax was withheld.

■ Extended Due Date for Submission of Foreign Tax Credit Calculation Form

The deadline for submission of a foreign tax credit calculation form is in principle the due date for corporate income tax return filing. However, exceptionally, in the event where a foreign government delayed in giving a notification showing the payment of foreign tax, an extension of 2 months is permitted from the date when such notification is received. Under the proposed change, such extension of submission due date for the exceptional cases will be extended to 3 months to help enhance taxpayer's convenience.

Korea's Income Tax Treaty with Hong Kong Became Effective from September 27, 2016

On September 7, 2016, Korea's National Assembly ratified the income tax treaty with Hong Kong without any change from the original agreement which was signed on July 8, 2014, according to the National Tax Service ("NTS").

This income tax treaty came into force effective from September 27, 2016 after the ratification was exchanged between the two countries. The taxes covered by the income tax treaty include individual income tax, corporation income tax, local income tax, and special tax for rural development for Korea and includes profits tax, salaries tax and property tax for Hong Kong. The tax treaty provisions will be applicable generally starting from April 1, 2017 in Hong Kong. In Korea, for the taxes withheld, the treaty provisions will be applicable starting from April 1, 2017, while for other taxes, the provisions will become applicable starting from January 1, 2017.

The income tax treaty will serve the purpose of relieving resident individuals and corporations from double taxation as well as preventing offshore tax evasion. The NTS expects to obtain tax information relating to tax evasion such as information on offshore accounts in Hong Kong and other financial information which has not been accessible to the NTS before this income tax treaty came into effect. According to the NTS, it is anticipated that Hong Kong government will provide the NTS with information on the accounts of Korean nationals from 2018 at the earliest. Also, the NTS may obtain access to certain tax information to confirm suspected tax evasion of specific taxpayers during tax audits since the tax treaty provides for the exchange of information which is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of Korea concerning taxes.

The key points of the treaty are summarized in the table below.

Items:	Key points (rates below include local income tax):
▪ Threshold for permanent establishment	- More than 12 months in case of building site or construction, assembly or installation project or related supervisory activities
▪ Income from immovable property	- Taxed on the country where such property is situated
▪ Profits from international transportation	- Taxed on the country where the enterprise engaging in international transportation resides
▪ Dividends	- 10% withholding tax if the beneficial owner is a company holding directly at least 25% of the capital of the company paying dividends; or - 15% tax for all other cases
▪ Interest	- 10% withholding tax
▪ Royalties	- 10% withholding tax
▪ Capital gains	- If the capital gains arise from the alienation of shares of a company deriving more than 50% of its asset value directly or indirectly from immovable property situated in a country, taxed in the country - Taxed in a country of source if the gains arise from the alienation of other property
▪ Income from dependent personal services	- Taxed in the country where such services are performed

Tax Tip: Utilization of Net Operating Losses

Tax loss carryover for ten years is permitted under the tax law currently (for five years for tax loss incurred before 2009).

But, a company which is not classified as a Small and Medium-sized Enterprise ("SME") may utilize its tax loss carry-forward only within 80% of the taxable income of the fiscal year (excluding non-SME under a business rationalization plan, workout plan, etc.).

Tax loss carry-back for one year is permitted only to SME.

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

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