

# Newsletter

September 2021

Bi-monthly Newsletter of Hanul LLC



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*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.*

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## ■ Proposed South Korean Tax Law Changes in 2022

On July 26, 2021, the Ministry of Economy and Finance (MOEF) of Korea announced the government tax reform proposals to be implemented from 2022. The proposed tax law changes will be finalized after the National Assembly passes the bill. We summarized the major proposed tax law changes in 2022 to keep you updated as follows.

### <International Taxation>

#### ● Introduction of reporting requirements of liaison offices of foreign corporations

Under the proposal, the liaison offices of foreign corporations shall be required to submit certain information on the status of the liaison office by February 10<sup>th</sup> of the following year. The required information includes basic information of the liaison office, its representative, information relating to its headquarter, other branches of the foreign corporation in Korea and the list of domestic customers, etc. The purpose is to prevent the avoidance of corporate income tax liability through liaison offices.

The proposed change will become effective from the fiscal year beginning on or after January 1, 2022.

#### ● Introduction of documentation requirement for foreign company or non-resident providing electronic services

Under the proposal, the foreign company or non-resident which provides electronic services to Korean customers shall be required to maintain transaction details such as the type of services provided, service recipients, considerations, numbers of transactions and the timing of supplies for 5 years. In addition, if requested by the tax authorities, such transaction details should be submitted within 60 days as from receiving the request.

The proposal shall apply to the electronic services provided on or after July 1, 2022.

#### ● Inclusion of loss making companies for transfer pricing comparability analysis

Under the proposal, companies that suffered losses in periods affected by COVID-19 pandemic may be included in 3<sup>rd</sup> party comparables if they satisfy the comparability criteria. The intent of the proposal is to reflect 'Guidance on the transfer pricing implications of the COVID-19 pandemic' published by the OECD in December 2020.

The proposal shall apply to the tax base finalized or amended on or after January 1, 2022.

#### ● Extension of sunset period of flat income tax rate for foreigner workers

Currently, the individual income tax liabilities of foreigner workers (excluding daily employed workers) on earned income from the rendering of his/her services to companies in Korea including foreign invested companies can be finalized by applying the 19% flat income tax rate (excluding local income tax equal to 10% of income tax) on gross earned income for the first five (5) year period. This rule was supposed to expire at the end of 2021.

Under the proposal, this rule will be extended to December 31, 2023.

#### ● Introduction of tax credit limit for voluntary tax payment through a taxpayers' association

Class B Earned income means employment income received from a foreigner or foreign corporation outside

Korea, excluding those claimed as a deductible expense for a Korean place of business of a non-resident or a foreign corporation. Class B earned income can be reported by respective employees either (1) through a Class B taxpayers' association by the 10th day of the following month or (2) through the individual income tax return filing by May 31 of the following year. Currently, employees can enjoy a 5% tax credit if they voluntarily report their monthly Class B earned income through a taxpayers' association.

Under the proposal, the tax credit will be subject to annual limit of KRW 1 million. This will be applicable to income earned from January 1, 2022.

- **Increase in low tax rate threshold for CFC rule**

In order to prevent offshore tax avoidance, the threshold for low tax rate for determining a CFC will be increased from the current 15% to 70% of the Korean top marginal corporate income tax rate (25% at present).

The proposed amendment will apply from the tax year commencing on or after January 1, 2022.

### <Other Items of Interest>

- **Reduction of late payment interest charge**

Currently, the interest charge for late payment of taxes is 0.025% per day (9.125% per annum) of the amount unpaid or underpaid. Under the proposal, the late payment interest charge will be decreased to 0.019%~0.022% per day (6.94%~8.03% per annum).

This amendment will be applicable to a late payment interest charge imposed after the enforcement date of new presidential decree. However, former provision shall apply in the case where tax payment due date has already passed before the enforcement date of new presidential decree.

- **Temporary extension of the carryback period for tax losses for SMEs**

Currently, tax losses incurred in a current year for SMEs can be carried back for one (1) year immediately preceding the tax year. Under the proposal, tax losses incurred can be carried back for two (2) years for SMEs. This temporary extension is allowed limited to the tax year ending on or before December 31, 2021.

- **Temporary increase in tax credit rate for donation**

Under the proposal, additional 5% of tax credit will be applied for donations made by individual taxpayers.

Current credit rate		Proposed credit rate	
Up to KRW 10 million	15%	Up to KRW 10 million	20%
Over KRW 10 million	30%	Over KRW 10 million	35%

## ■ HR Tips for Companies Having Foreign (non-Korean) Employees

- **At hire/initial payroll setup**

Under the Individual Income Tax Law ("IITL"), individual income tax liabilities of foreigner(non-Korean) workers (excluding daily employed workers) on earned income from rendering of his/her services to companies in Korea including foreign invested companies can be finalized by applying the 19% flat income tax rate (excluding local income tax by 10% of the income tax) on gross earned income for the first five (5) year period notwithstanding Article 55 (1) of the IITL ([Article 18-2, Special Tax Treatment Control Law of Korea; STTCL](#)).

For foreigners who have already been working in Korea as at Jan 1, 2014, however, the 19% flat income tax rate application was allowed only up to December 31, 2018, and as such, the progressive tax rate should apply from Jan 1, 2019 and onward for the foreigners concerned.

When the flat 19% tax rate is applied, provisions concerning income taxation, such as tax exemption (non-taxable income), deduction, reduction or exemption, and tax credit allowed under the IITL as well as this STTCL shall not be applicable to the foreigners concerned. At the year-end settlement in February after each calendar year-end, annual settlement calculations under both the 19% flat rate and the progressive tax rate scheme will be simulated, and more favorable scheme based on the comparison will be applied for the foreign employees.

The employer (withholding agent) should submit the flat tax rate application form to the competent tax office by the 10th day of the following month.

● **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 기업투자				
F-4	Overseas Korean 재외동포				
D-10	Employment 구직		NOT statutorily required		

Unless the foreign(non-Korean) employee concerned is eligible for waiver of statutory social insurances and submits waiver applications with proper supporting documents thereof required by the Korean social insurance agencies, the foreign employee shall be subject to participation in the statutory social insurance programs in Korea mandatorily.

● **At permanent departure from Korea: Korean national pension refunds (lump-sum refunds)**

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”. Upon request, we may assist to review the eligibility of national pension refunds at departure.

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

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