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Hanul LLC

Newsletter

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Contents

■ Introduction of New Tax Incentives to Encourage Domestic Spending and Small and Medium-Sized Enterprises

The Korean National Assembly passed amendments to the Special Tax Treatment and Control Law (STTCL) on April 29, 2020 and the State Council of Korea passed the relevant presidential decree of the STTCL on May 26, 2020, in a follow-up procedure to encourage domestic spending by introducing a new corporate income tax credit for certain prepayments of goods and services. The amendments also would allow early provisional tax refunds for small and medium-sized enterprises (SMEs).

The major changes are summarized below.

● Tax credit for corporations making prepayments for goods and services to be purchased

The requirements to qualify for the new credit would include the following:

- goods or services for which the prepayment is made have to be purchased for business purposes;
- goods or services have to be purchased from small business owners;
- the prepayments should exceed KRW 1 million per transaction; and
- the prepayment shall be made during the period of April 1 through July 31, 2020 ahead of its original payment term agreed upon under the contract for at least 3 months or more for goods or services that are to be provided by December 31, 2020.

The tax credit will be equal to 1 % of the qualified prepaid amount. It is possible to claim the credit at the same time as other tax credits and exemptions, and the credit is not limited. However, even if the taxpayer has no corporate income tax liability for the year, the minimum tax and the special fishery and agriculture tax still would be levied.

Taxpayers may apply for the tax credit when filing their annual income tax returns for the fiscal year (FY) including December 31, 2020, and supplemental documents should be submitted to substantiate that they made eligible prepayments.

● Granting of early tax refunds for small and medium-sized enterprises

SMEs and sole proprietors that filed individual or corporate income tax returns for FY2019 will be eligible for early provisional tax refunds. Early provisional tax refunds can be made to taxpayers incurring tax losses during the first half year (six months) of FY2020.

The early provisional tax refunds will be calculated based on the formula (A – B), where:

A = 50% of FY2019 tax liability

B = [(FY2019 taxable income – (tax loss for the first half year of FY2020 x 2)) x FY 2019 tax rate] x 50%

The early provisional tax refund shall be limited to 50% of the previous year's individual or corporate income tax liability. The final tax refund settlement will be made by comparing the provisional tax refund with the final tax refund calculated for FY2020. Applications for early provisional tax refunds should be submitted within two months after the end of the first half year of FY2020 (i.e., by the end of August 2020 for calendar year-end taxpayers).

■ HR/Payroll Tips

● 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 subsidiary company	Employees of Korean subsidiary company
<u>**At company level**</u> (1) If the RSU satisfies <u>**all 4 conditions**</u> 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: 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 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.	<u>**At individual employee level**</u> (1) Where employees receive RSU granted from the parent company/affiliated company and the RSU costs are charged back to the Korean subsidiary company, the related RSU income of employees shall be subject to monthly Korean payroll income taxes and payment obligations at the time of vesting (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. (2) If RSU costs are not charged back to the Korean company 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 (i) through a Class B taxpayers' association by the 10th day of following month of RSU vesting) (in which case 5% income tax credit 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 taxes.
To be deducted <u>when RSU is vested</u>.	To be taxed <u>when RSU is vested</u>.

- ## Recent decision by the Tax Tribunal regarding application of the flat rate to foreigner(non-Korean) employees

Under the STTCL, the individual income tax liabilities of foreign workers on earned income from the rendering of his/her employment services to companies in Korea including foreign invested companies can be finalized by applying the 20.9% flat tax rate (including 19% income tax and 1.9% of local income tax) on gross earned income for the first five (5) year period notwithstanding Article 55(1) of the Individual Income Tax Law (IITL) of Korea (*Article 18-2, STTCL*). Foreigners who had already been working in Korea as at January 1, 2014 were eligible for 20.9% flat tax rate limited up to the taxable year <u>ended December 31, 2018</u>.

In this connection, there was a recent tax appeal case where a foreigner(non-Korean) employee had worked in Korea from 2003 to 2007, moved to the US for work between 2008 and early 2015, and then returned to Korea in August 2015 and has been working for the company in Korea until now. This foreign employee has been applied the flat tax rate for years 2015 through 2018.

However, the National Tax Service (NTS)) interpreted the meaning of 'the date the person first provides labor in Korea' literally and refused to apply the flat tax rate to this foreign employee for years 2015 – 2018 arguing that this foreign employee had started the labor in Korea originally in 2003 and hence, the 5-year period had already elapsed. The NTS took the position that the flat tax rate should be applicable only for the first 5 consecutive years from the date the person first began to provide labor in Korea (in this case, from 2003). Therefore, the NTS determined that the foreign employee was not eligible to be applied the flat tax rate for his income for years 2015 - 2018. Consequently, additional income tax (by applying the progressive tax rates) was imposed as well as penalties thereon.

The foreigner employee filed the tax appeal to the Tax Tribunal in October 2019, and in response, the Tax Tribunal recently delivered a favorable tax ruling to the foreigner employee (***Joshim 2019In3944***).

In this tax ruling, the Tax Tribunal ruled that the flat tax rate shall still apply to a foreign employee in Korea for a period of 5 years counting from the first date that he/she restarted providing labor in Korea if such foreign employee started working again after the career break in Korea after January 1, 2014 regardless of whether the foreign employee had provided labor in Korea in the past prior to January 1, 2014 or not.

With this recent tax ruling of the Tax Tribunal, foreigner employees who were unable to benefit the flat tax rate application in the past due to the NTS interpretation may now be allowed to claim refunds by filing amended income tax returns for the past five years.

Foreigner employee shall be eligible for flat rate application with limited time period as summarized below:

Depending on the first start date of work in Korea:	**Time limit of flat tax rate application will be determined as below:**
• If a foreigner(non-Korean) employee was working in Korea **as at January 1, 2014** (regardless of whether the employee was applied the flat tax rate before or after Jan 1, 2014)	Eligible to be applied the flat tax rate only **up to December 31, 2018.**
• If the employee started working in Korea **after January 1, 2014**	Eligible to be applied the flat tax rate **for 5 years** counting from the start year of work in Korea. **Under the recent tax ruling, if a foreign employee started working again in Korea after career break after January 1, 2014, he/she shall still be eligible for flat rate for 5 years counting from the start date after January 1, 2014.**

■ Korean Government Measures to Support Businesses and Individuals from the Impact of COVID-19 Pandemic

The South Korean government announced measures to support businesses and individuals from the impact of the coronavirus (COVID-19) pandemic. While the government's package of help for businesses and individuals will evolve over time, we summarize the key elements of the current proposals of the government for your information for the time being as below.

You will find that most of the tax relief measures are for companies located in designated disaster zones (Daegu and some Northern Gyengsang province) and for small private businesses.

● Tax relief package for corporate income tax and indirect tax (VAT)

The South Korean government unveiled a package of tax relief measures for corporate income tax and indirect tax (VAT) earlier in March 2020 to help support businesses and individuals affected by COVID-19 as below.

a. Corporate Income Tax (“CIT”):

- The qualified corporations may apply for extension of CIT returns filing and CIT payments thereof as much as nine (9) months.
- Special income tax reduction rates for the qualified small and medium sized corporations located in the designated areas shall be doubled from 15%～30% to 30%～60%.
- Tax limitation of entertainment expenses shall be increased from 0.3%～0.03% to 0.35%～0.06% of revenues.
- Depending upon the given situation, a tax audit shall be stopped or postponed.

b. Indirect tax (“VAT”):

- The qualified corporations may apply for extension of quarterly VAT return filing and VAT payments thereof as much as nine (9) months.
- For the qualified small individual business with less than annual revenue of KRW 80 Million, VAT payments shall be reduced from 10% to 0.5 %～3%.

These tax relief measures are mostly for companies located in designated disaster zones (the City of Daegu and parts of Northern Gyengsang Province) and for small private businesses.

Coronavirus employment retention subsidy

To help businesses from the COVID-19 pandemic, the South Korean government is topping up a financial support package to encourage companies to keep hold of their employees. The extra funds amount to nearly 325 million US dollars raising the total financial support fund to be more than 405 million US dollars. The government stated that the support will be available for all industries and will be distributed between April and June 2020. It is expected that the subsidies would help companies trying to maintain their employment numbers despite the challenging economic climate. It means that, even if the businesses have to close temporarily, they will retain their workers on the books. The government stated that the applications for the subsidies have been strong across all industries. The subsidies are expected to help companies fend off bankruptcy and avoid a sharp contraction of jobs. The coronavirus impact is temporarily making manufacturing very difficult. The support will help workers sustain their wages and their spending capacity.

To encourage higher retention of employment, 67% (large sized company) or 90% (small and medium sized company) of employment suspension allowance paid shall be subsidized by the government for 3 months from April to June 2020. To qualify for this government subsidy, the employer shall submit an application together with its employment retention plan to the government, and the employer must have been enrolled at the unemployment insurance for its employees.

Government subsidy for statutory paid leave granted to hospitalized/quarantined workers

The government subsidy for paid leave will be available to employers who have granted paid leave to hospitalized or quarantined workers in accordance with the Infectious Disease Control and Prevention Act. The amount of support is based on the daily wage of the worker (up to KRW 130,000 per day) and employers can apply for the subsidy to the National Pension Service.

Reduction in statutory social insurance premiums

The South Korean government will offer reductions or exemptions on four social insurances to ease the burden for low-income households and small business owners amid the COVID-19 pandemic. The support measures were decided upon at an emergency economic meeting held on March 30, 2020. The government will reduce health insurances for 3-month period between March and May by 30 percent for those in the bottom 20 to 40 percent bracket based on the monthly health insurance payment, with each person expected to benefit Won 20,000 reduction per month in average for the business based program participants (직장가입자 in Korean) and Won 6,000 reduction per month in average for the region based program participants (지역가입자 in Korean).

The industrial accident compensation insurance paid by businesses with 30 or less employees and the self-employed will be cut by 30 percent for 6-month period from March through August 2020, which is estimated to benefit 2.6 million businesses and Won 443 billion in total.

The qualified national pension subscribers will be able to get their monthly pension contribution payments deferred for 3 months from March to May 2020 by filing an application together with the supporting documents substantiating that their income has been decreased.

Employers with 30 or less workers can get a 3-month grace period for employment and accident compensation insurance payments. The government also plans to offer discounts or temporary deferred payment of electricity fee payments for low-income families and small businesses starting from March 2020.

- **Providing subsidies to eligible companies in travel industry that are affected by the COVID-19 pandemic for job security of their workers**

To be qualified for this government subsidy, the affected company must have implemented employment retention measures such as cessation of business (휴업 in Korean) or leave of absence (휴직 in Korean) without reducing its number of workers. The eligible companies may receive up to KRW 1,980,000 max per month and per person (KRW 66,000 per person and per day). In addition to the implementation of employment retention measures, companies should also meet certain requirements such as 50% increase in inventory, reduction in production volume and sales decrease by 15% or more, etc.

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

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