

Newsletter

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**Smart decisions. Lasting value.**

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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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■ Important South Korean Tax Reporting Requirements Coming Due

● Guidance on CbC Reporting Requirements

The Korean tax authorities has 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, the Korean ultimate parent company of a multinational group whose consolidated revenue exceeds KRW1 trillion during the preceding fiscal year 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, etc.

The Korean ultimate parent company and the taxpayers whose ultimate controlling shareholder is established in a foreign country is 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, 2021 for the taxpayers having the fiscal year ended December 31, 2020).

Other key points of the government's guidance include:

a. CbC Reporting Obligator

In case 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 KRW1 trillion during the preceding fiscal year.

In case 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 exceeds 750 million Euros (or equivalent) in the preceding fiscal year if any of the following conditions are met:

- (1) There is no obligation to submit a CbC report under the laws and regulations of the country where the ultimate parent company is established; or
- (2) There is no arrangement for the exchange of CbC report information between Korea and the country where the ultimate parent company is established.

b. Covered Scope of Entities

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

● Guidance on Overseas Financial Account Reporting

Under the International Tax Coordination Law of Korea, if Korean resident individuals or domestic companies have financial accounts opened with overseas financial institutions and the total value of such accounts exceeds KRW 0.5 billion on any last day of each month of the relevant year, the Korean residents and domestic companies are required to file a report on their overseas financial accounts to the tax office from June 1 to 30 of the following year.

In 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 companies that violated reporting requirements can be subject to imprisonment of up to 2 years.

- **Reporting of Deemed Gift Taxes on Transactions with Specially Related Corporations**

In case where a company's proportion of sales to another company which is a related party of dominant shareholder of the company accounts for more than 30% (50% for SMEs and 40% for defined medium-scale companies), the deemed gift taxes shall be imposed to the dominant shareholder and its relatives.

In applying the deemed gift taxation rule, the closing date of the relevant business year of a beneficiary corporation shall be deemed the date of donation. And the deemed gift tax return of the dominant shareholder should be filed within 3 months from the due date of annual corporate income tax return of the beneficiary company (e.g., by June 30, 2021 for the shareholders of the companies having the fiscal year ended December 31, 2020).

If the gift tax return is filed within the due date, the tax credit at 3% can be applied.

■ Payroll Related Tax Compliance 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 company	Employees of Korean company
<u>At company level</u> <p>(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:</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- 	<u>At individual employee level</u> <p>(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 <u>at the time of vesting</u> (not at the time of grant). The employer as the withholding agent shall be obligated to</p>

<p>back of RSU costs between the parent/affiliate company and the Korean subsidiary company;</p> <p>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> <p>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.</p> <p>(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.</p>	<p>withhold payroll taxes and report to the tax authorities together with regular payroll.</p> <p>(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 payroll taxes.</p>
<p>To be deducted <u>when RSU is vested</u>.</p>	<p>To be taxed <u>when RSU is vested</u>.</p>

- Simplified Withholding Tax Statement for Business Income to be Filed Monthly Starting from July 2021**

Previously, companies as the withholding agents were required to submit the simplified withholding tax statement for business income (“거주자의 사업소득 간이지급명세서 제출”) to the governing district tax office for business income paid to outside contractors on a semi-annual basis in January and July of every year.

However, under the amended Individual Income Tax Law (IITL) of Korea, such simplified withholding tax statement for business income shall be filed with the governing district tax office on a monthly basis by the end of the following month starting with the business income paid on July 1, 2021 and after. For the business income paid in July 2021, the simplified withholding tax statement of business income should be filed by August 31, 2021.

- Withholding Tax Statement for Payment to Temporary Worker to be Filed Monthly Starting from July 2021**

Previously, the withholding tax statement filing for payments made to temporary workers (“일용근로소득지급명세서”) were required to be filed with the governing district tax office on a quarterly basis in January, April, July, and October of every year.

Under the amended IITL, such withholding tax statement filing for payments made to temporary workers shall be filed with the governing district tax office on a monthly basis by the end of the following month starting from July 2021. For the payments made to temporary workers in July 2021, the withholding tax statement for payment to temporary worker should be filed by August 31, 2021.

■ Other Tips

● National Pension, Max Contribution Ceilings Increased Effective from July 1, 2021

Effective from July 1, 2021, the monthly max contribution ceiling of the statutory national pension will increase from KRW 226,350 to **KRW 235,800** each for employer and employee (*Ministry of Health and Welfare (MOHW) announcement, March 30, 2021*).

The statutory social insurance premium rates in effect from July 2021 can be summarized as below.

Social Insurances:	Employee portion	Employer portion	Total	Remark
National Pension (NP)	4.5%	4.5%	9.0%	Won 235,800 of monthly contribution ceiling each
National Health Insurance (NHI) a. Health Insurance (HI)	3.43%	3.43%	6.86%	Won 3,523,950 of monthly contribution ceiling each
	11.52%	11.52%	23.04%	Assessed at 11.52% of HI premium above
Employment Insurance (EI)	0.8%	1.05% ~1.65%	1.85% ~2.45%	Vary depending on the number of employees
Industrial Accident Compensation Insurance (IACI) (Note b)	NIL	0.60%~ 18.50%	0.60%~ 18.50%	Vary depending on type of business

(NOTE)

- a. 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).
- b. 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.

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

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