

Newsletter

May 2022

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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■ National Tasks of the New Government regarding Taxation

On May 3, 2022, the 20th Presidential Transition Committee announced the '110 National Tasks' to set the vision and goal of the new president Yoon Suk-Yeol and his administration.

The followings are the major items related to the Korean taxation.

● Reform of the real estate taxation for housing stabilization

Reform of the 'Comprehensive Real Estate Holding Tax'

- Adjustment of 'Publicly Noticed Price' and 'Fair Market Value Ratio' to ease the burden of the comprehensive real estate holding tax
- Introduction of deferred tax payment for senior citizen who owns a house for one's own living
- Preparation of fundamental direction for reform of the 'Comprehensive Real Estate Holding Tax' such as the tax rate, etc.
- Review of the integration of the property tax and the comprehensive real estate holding tax in the mid-to-long-term

Revision of the Capital Gain Tax for multiple house owners

- Temporary suspension of the application of heavy capital gain tax on owners of multiple houses
- Review of heavy capital gain taxation policy for owners of multiple houses in the process of comprehensive real estate tax reform

Revision of the Acquisition Tax

- Expansion of acquisition tax reduction and exemption on houses acquired for the first time in life
- Alleviation of heavy acquisition tax for owners of multiple houses

● Strengthening of financial and taxation support for dynamic innovation growth

Invigoration of Investment, Employment, and Reshoring

- Strengthening of taxation support such as R&D tax credit for the transition to Digital and Low-Carbon Economy
- Strengthening of taxation support for stock options to support the inflow of talented people to venture companies
- Strengthening of taxation support for reshoring to Korea

Facilitation of the intergenerational transfer of technology and capital

- Revision of requirements for the gift tax deduction on family owned corporation/business succession

● Vitalization of venture capital through innovation of capital market and enhancement of investor's confidence

Revision of the taxation system for stocks and financial instruments

- Abolition of capital gains tax for individual investors (excluding shareholder who holds a super-large amount of stocks (defined)) on stocks listed in the Korean stock market
- Implementation of income taxation on investing in virtual assets after the relevant investor protection act is legislated

■ 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, 2022, for the taxpayers having the fiscal year ended December 31, 2021).

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, 2022, for the taxpayers having the fiscal year ended December 31, 2021).

- 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, the Korean residents and domestic companies are required to file a report on their overseas financial accounts to the Korean tax authorities from June 1 to 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 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

● 2021 individual income tax return filing due by May 31, 2022

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 2021 annual individual income tax return is coming due on May 31, 2022 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>

<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>(i) through a taxpayers' association by the 10th day of following month of RSU vesting) (in which case 5% income tax credit will be allowed) OR</p> <p>(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).</p> <p>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>

■ Statutory Social Insurance Tips in from July 1, 2022

- **Max contribution ceiling of statutory national pension increased effective from July 1, 2022**

Effective from July 1, 2022, the monthly max contribution ceiling of the statutory national pension will increase from KRW 235,800 to KRW 248,850 each for employer and employee (*Ministry of Health and Welfare (MOHW) of Korea announcement, April 1, 2022*)..

- **Contribution rate of statutory employment (unemployment) insurance increased from July 1, 2022**

Effective from July 1, 2022, the employment insurance rate will be raised by 0.1% each for employee and employer as summarized below.

Employment Insurance:	Before	From July 1, 2022	
Employee portion	0.8%	0.9%	
Employer portion	1.05% ~1.65%	1.15 ~ 1.75%	Vary depending on the number of employees

For your future reference, the statutory social insurance rates in effect from July 1, 2022 can be summarized as below:

Social Insurances:	Employee portion	Employer portion	Total	Remark
National Pension (NP)	4.5%	4.5%	9.0%	Monthly contribution ceiling of Won 248,850 each from July 1, 2022
National Health Insurance (NHI)				
a. Health Insurance (HI)	3.495%	3.495%	6.99%	Monthly contribution ceiling of Won 3,653,550 each
b. Long-term Care Insurance for the Elderly (HI-LTCI)	12.27%	12.27%	12.27%(*)	(*) Assessed at 12.27%

				of HI premium above
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

■ HR Tips, Labor Law Updates effective from April 14, 2022

On April 13, 2022, the Ministry of Employment and Labor (MOEL) of Korea announced that the amended Employee Retirement Benefit Security Law (ERBSL) would come into force effective from April 14, 2022. Provided below is a summary of key amendments which we believe shall affect foreign companies doing business in Korea.

● **Mandate to transfer traditional severance pay to Individual Retirement Pension (IRP) account opened with an external retirement pension management company**

Before this amendment of ERBSL, only the retirement payment for resigning/terminated employees who are enrolled in retirement pension scheme (either Defined Benefit or Defined Contribution type) shall be transferred to Individual Retirement Pension (IRP) account opened under the name of the resigning/terminated employee.

However, effective from April 14, 2022, under the amended ERBSL provisions, severance pay to be made to employees who are under the traditional severance pay scheme shall also be transferred to their respective IRP account. Such IRP account can be opened only by the employee himself/herself. When transferring severance pay to the IRP account of the employee concerned, the employer shall specifically designate it as tax deferred severance pay and pay in "gross" amount without withholding taxes.

We bring this agenda for special attention to companies who currently have the traditional severance pay scheme and have not yet adopted the retirement pension scheme for their employees in Korea.

For the transfer of severance pay to IRP account as of the termination date, companies under the traditional severance pay scheme should make sure to collect the information from the resigning/terminated employee including the following.

- (1) Copy of the IRP account bank passbook which indicates the account holder name, account number, retirement pension management company name and contact details (퇴사자 명의의 IRP계좌 통장 사본, IRP계좌 명의자, 계좌번호, 연금계좌운용사 및 연금계좌담당자 전화번호 포함)
- (2) Business entity registration certificate number/tax registration number of the retirement pension management company (연금계좌운용사의 사업자등록번호)

● **Assessment of penalty if fail to deposit legal minimum reserves for Definite Benefit type retirement pension scheme**

Previously, for employers who adopted the retirement pension scheme as the Defined Benefit type, in the case where the employer fails to deposit the legal minimum reserves or more with the external retirement pension management company, such employer shall be obligated to prepare a financial stabilization plan and notify to the representative of their employees (근로자대표). However, even in the case where the employer fails to resolve the legal minimum reserve shortage issues, there were no penalties imposed to the employer.

However, effective from April 14, 2022, for employers who fail to resolve the legal minimum reserve

shortage issues by depositing at least one-third or more of such shortage within 1 year period shall be subject to fines of up to maximum KRW 10 million.

This amendment shall apply to an employer who receives a Notification of Results of Financial Review from their external retirement pension management company that the employer falls short of legal minimum reserve deposit requirement on or after April 14, 2022, and the employer concerned shall be required to resolve this shortage issue by depositing the shortage amount within one year from the end of the immediately preceding fiscal year, not from the notification delivery date.

- **Mandatory establishment of a retirement pension reserve management committee for companies who adopted Defined Benefit type retirement pension scheme and have 300 or more of regular workers**

Under the amended ERBSL, companies who have 300 or more regular employees (defined) and adopted a Defined Benefit type retirement pension scheme are now obligated to establish a retirement pension reserve management committee (적립금운용위원회).

Before the amendment, employers were allowed to make decisions on how to manage the reserve fund for the Defined Benefit type retirement pension at their sole discretion, which has shown problems such as low earnings as the employers tend to invest the reserve funds mainly in financial instruments that guarantee principal with low interest earnings. Under the amended ERBSL, establishing a retirement pension reserve management committee is now mandatory in an effort to improve operation of reserve funds more reasonably.

If employers fail to comply with this reserve management committee establishment requirement or does not prepare a reserve fund management plan, a fine of up to KRW 5 million can be imposed.

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

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