

# Newsletter

May 2024

Update on Tax &amp; BPO Trends in South Korea

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*Hanul LLC, a member firm of Crowe Global, is a major accounting firm in South Korea. The **International Business Group (IBG) at Hanul LLC** specializes in Tax & BPO services as well as assurance and business advisory services tailored specially for foreign investors.*

*We provide a wide range of services designed to meet the needs of companies considering foreign investment in Korea. Our services include: 1) **Corporate Administrative Services**, offering support from business entity establishment to liquidation and corporate secretarial services; 2) **Payroll, Social Insurances and HR Advisory Services**; 3) **Accounting and Financial Compliance Services**, including cash disbursement and bank account management; 4) **Tax Compliance and Advisory Services**, 5) **Global Mobility Tax Services**, and 6) **Assurance and Business Advisory Services**. For companies considering foreign investment into Korea, we can be of your best assistant.*

*This bi-monthly newsletter aims to provide foreign investors with updates on Tax & BPO trends in South Korea, as well as other related subjects of special interests to foreign investors.*

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## ■ Important South Korean Tax Reporting Requirements Coming Due

### ● Guidance on CbC reporting requirements

The Korean tax authorities have adopted the requirements 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 authorities within six months from the fiscal year-end (e.g., by June 30, 2024, for the taxpayers having the fiscal year ended December 31, 2023).

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 the Korean tax authorities, within six months from the end of the fiscal year (e.g., by June 30, 2024, for the taxpayers having the fiscal year ended December 31, 2023).

- 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 a fine equivalent to the amount between 13/100 and 20/100 of the amount of breach of an obligation to report.

● **2023 annual global income tax return filing due by May 31, 2024**

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 2023 annual individual income tax return is coming due on May 31, 2024 together with necessary tax payments thereof.

■ **Individual Income 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
<p><b><u>At company level</u></b></p> <p>(1) If the RSU satisfies <b><u>all 4 conditions</u></b> 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"> <li>a. The parent/affiliate company provides such RSU within 10% of its total issued and outstanding shares;</li> <li>b. There is a written agreement on charge-back of RSU costs between the parent/affiliate company and the Korean subsidiary company;</li> <li>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</li> </ul>	<p><b><u>At individual employee level</u></b></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 with an annual cap of KRW 1 million 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 income taxes.</p>
<p>To be deducted <u>when RSU is vested</u>.</p>	<p>To be taxed <u>when RSU is vested</u>.</p>

● **2023 Capital Gains Tax (CGT) final return filing due by May 31, 2024**

Gains arising from the disposal of capital assets such as land, buildings, stocks, or rights related to real estates are included in an individual's taxable income but are taxed separately from global income (employment income, business profits, dividend, pension, interest, rental, and other miscellaneous income).

A resident taxpayer who transfers capital assets shall file a preliminary CGT return with the Korean tax authorities within the following relevant period:

Category	Filing due dates
Land, buildings or rights related to real estates	- <u>Within 2 months</u> from the last day of the month in which an asset is transferred
Shares of companies (excluding shares of foreign companies)	- <u>Within 2 months</u> following the end of the half year to which the share transfer date belongs

Any resident taxpayer who files a preliminary return may choose not to file a final return on the relevant income. However, this shall not apply to cases defined by the Presidential Decree, where preliminary returns on assets subject to progressive tax rates are made at least twice in 2023. In addition, the taxpayer with capital gains on shares of foreign companies in 2023 shall file a final return of CGT with the Korean tax authorities by May 31, 2024.

■ **Statutory Social Insurance Tips**

● **Year-end settlement of statutory national health insurance premiums performed in April each year**

During the year, the statutory national health insurance (NHI) is withheld from employee's salaries (as assessed by the National Health Insurance Service (NHIS) based on the gross salary base excluding a non-taxable allowance of the employee for the prior year reported; this monthly withholding will apply for the period of April of the current year through March of next year).

Employers shall finalize and report annual gross earned income of their employees to the government agency in March of the following year.

In April of the following year, the NHIS performs year-end settlement of NHI based on the actual gross salaries paid during the year and assesses additionally any underpaid NHI (for employee and employer

portions in total) based on the results of such year-end settlement. The employer is required to withhold additionally any underpaid NHI from employee's salaries through April payroll and pay the additional NHI premium (for employee and employer portions in total) by payment due date of May 10.

Employees can apply for installment payment for the underpaid NHI premiums for up to 10 installments if the underpaid NIH is higher than the NHI premium of the month.

In addition, based on the gross salary base reported to the government agency for 2023, the NHIS will assess new monthly NHI withholding following the calculation methodology below. This new monthly NHI withholding shall apply for the period of April 2024 through March 2025.

	<b>Before April 2023 – Mar 2024</b>	<b>New monthly withholding Apr 2024 – Mar 2025</b>
NHI monthly withholding	Avg. monthly wage reported for 2022 × 3.545% (NHI rate in 2024) (*)	<b>Avg. monthly wage reported for 2023 × 3.545%</b>

(\*) HI rate in 2024 has remained unchanged from 2023

● **Dependent family qualification of statutory national health insurance coverage for foreigners (non-Korean) amended (effective from April 3, 2024)**

The Korean government recently announced that for foreigners (non-Korean) to add their dependent family members to their statutory national health insurance (NHI) plan in Korea, such dependent family members (other than spouse and children under the age of 19) shall be required to physically reside in Korea **for 6 months or more** to be qualified for NHI coverage under the amended National Health Insurance Act, which took effect from April 3, 2024. Spouse and children under the age of 19 will still be qualified upon arrival in Korea as before. This amended qualification requirement shall also apply to dependent family members of Korean nationals residing overseas.

Before this revision, dependent family members of foreigners or overseas Korean nationals were eligible for NHI coverage regardless of their duration of stay in Korea as long as they meet dependent criteria (defined).

■ **HR Tips**

● **Joint childcare leave benefits expanded**

The existing "3+3 Joint Childcare Leave System" has been expanded to the "6+6 Joint Childcare Leave System" according to Article 95, Paragraph 3 of the Enforcement Decree of the Employment Insurance Act. Under this expanded system, if both parents take their childcare leave concurrently or successively for the same child within 18 months of childbirth, the government provides childcare leave pay for both parents for the 6 months as summarized below

	Father takes childcare leave for 1 month	Father takes childcare leave for 3 months	Father takes childcare leave <b>for 6 months</b>
Mother takes childcare leave for 1 month	Father: 200 Mother: 200	Father: 500 (200+150+150) Mother: 200	Father: 950 (200+150+150+150+150+150) Mother: 200
Mother takes childcare leave for 3 months	Father: 200 Mother: 500 (200+150+150)	Father: 750 (200+250+300) Mother: 750 (200+250+300)	Father: 1,200 (200+250+300+150+150+150) Mother: 750 (200+250+300)

Mother takes childcare leave for 6 months	Father: 200 Mother: 950 (200+150+150+150+150+150)	Father: 750 (200+250+300) Mother: 1,200 (200+250+300+150+150+150)	Father: 1,950 (200+250+300+350+400+450) Mother: 1,950 (200+250+300+350+400+450)
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● **Childcare leave benefit, eligibility and maximum split use allowed**

Under Article 19-4(1) of the Equal Employment Opportunity and Work-Family Balance Assistance Act of Korea, employees can split childcare leave into 3 periods (for example, 6 months +3 months + 3 months), but the total period of the childcare leave should not exceed one year in total (for one child). In addition, since November 19, 2021, employees are allowed to take childcare leave even during pregnancy. In such cases, the childcare leave used by a pregnant female employee shall not be included in counting the number of split uses of childcare leave. The relevant provisions are extracted as below.

Article 19-4 (1) of the Equal Employment Opportunity and Work-Family Balance Assistance Act,  
  
(1) An employee may use childcare leave over several occasions, split into a maximum of two periods. In such cases, the number of childcare leave used by a pregnant female employee for maternity protection shall not be included in the number of split uses of the childcare leave. <Amended on Dec. 8, 2020; May 18, 2021>

We provide you with an example for better understanding as below.

- 1st period: A pregnant female employee takes childcare leave from Jan 1, 2024 ~ Jan 31, 2024 (for 1month)
- 2nd: A pregnant female employee takes childcare leave from March 1, 2024 ~ March 31, 2024 (for 1month)
- 3rd: A pregnant female employee takes childcare leave from May 1, 2024 ~ June 30, 2024 (for 2months)
- and the child is born on August 1, 2024

In this particular case, the childcare leave used prior to August 1, 2024 shall not be included in counting the number of split uses allowed, and hence, the remaining 8 months of the childcare leave period can still be utilized by splitting up to 3 periods (for example, 2 months +3 months + 3 months = 8 months in total).

■ **Doing Business Guide**

● **Different forms of business entities foreign investors may establish in Korea**

There are various types of business entities which a foreign investor may establish in Korea. The type is determined by the purpose of its business, relevant tax laws, and other government regulations. Generally, however, foreign investors choose one of the followings: Liaison/Representative Office, Branch Office, Wholly-owned Subsidiary, and Joint Venture.

The governing laws of Korea also differ according to the type of business presence. Establishment of a branch or liaison office in Korea is governed by the Foreign Exchange Transaction Law ("FETR") and related regulations. Matters relating to establishment of a subsidiary wholly owned by a foreign corporation or a joint venture company are governed by the Foreign Investment Promotion Act ("FIPA") and related regulations. Relevant provisions of the Commercial Code and various tax laws apply in both cases mentioned above. Usually a wholly-owned subsidiary or a joint venture takes the form of a "Chusik Hoesa" (stock company) or a "Yuhan Hoesa" (limited company).

We may provide more detailed information on establishment procedures of each type of business entities upon request.

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

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