

Newsletter

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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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■ Revision of Singapore – Korea Tax Treaty

The Government of the Republic of Korea and the Government of the Republic of Singapore signed updated Agreement for Avoidance of Double Taxation on May 13, 2019. This updated agreement will be in force after the ratification of assemblies of both countries. The details of the revision are as given below.

(1) Permanent Establishment

A building site, construction, assembly, installment project, or supervisory activity in connection therewith constitutes a permanent establishment (PE) only if such site, project or activity lasts more than **twelve months** (currently six months).

(2) Royalties

Royalties may also be taxed in a source country, but the tax so charged shall not exceed 5 percent of the gross amount of the royalties (currently 15 percent).

(3) Capital Gains

Gains from **alienation of shares shall be taxed only in the resident country** provided that the shares do not fall under the exceptions as given below (currently gains from the alienation of shares shall be taxed in both source country and resident country):

- (A) Shares, other than shares traded on a recognized stock exchange, deriving more than 50 percent of their value from the immovable property
- (B) Shares of the major shareholders which holds directly or indirectly more than 25 percent of the total shares issued by the company

(4) Independent Personal Services

The income from independent personal services of an enterprise shall be taxable only in the resident country unless the enterprise carries on a business in the source country through a PE located therein (currently there are criteria that enable taxation even if there is no PE in the source country).

(5) Introduction of the regulations against abuse of the treaty

A benefit under this Agreement shall not be granted to any arrangement or transaction whose principal purpose is to obtain such benefit from the treaty (newly introduced).

■ 2018 Korean Individual Income Tax Return due by May 31, 2019

Filing of 2018 annual individual income tax return is coming due on May 31, 2019 together with necessary tax payments.

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 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/her 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 earned income) 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. 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.

■ Statement of Acquisition and Management of Overseas Real Estate: "Form 97" due by May 31, 2019

Residents, including foreign individuals who stayed in Korea for more than 5 years in aggregate during the past 10 years from the end of the concerned tax year, are required to report "Statement of Acquisition and Management of Overseas Real Estate" by filing the "Form 97" to the competent tax office by May 31 of the following tax year if they have acquired overseas property (outside of Korea) or had investment rental income from such property during the concerned tax year.

Residents who fail to report by the deadline or who filed the report belatedly after the deadline shall be subject to delinquent filing penalty which is assessed at 1% of the acquisition amount of the property concerned (which will be raised to 10% from 2020 and onward).

■ Overseas Financial Bank Account Reporting (FBAR) Requirement: "Form 21" due by July 1, 2019

Under the International Tax Coordination Law of Korea, if Korean resident individuals or domestic companies have financial bank 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, such Korean residents and domestic companies are required to file a report on their overseas financial bank accounts to the tax office during the first day of June to the 30th of June of the following year. As the original filing deadline of June 30, 2019 falls on weekend, the filing for year 2018 is extended to July 1, 2019.

For non-reporting or underreporting, Korean resident individuals or domestic companies concerned shall be subject to penalties ranging between 10 - 20% max depending on non-reported or underreported amount. If the non-reported or underreported amount exceeds KRW 5 billion, Korean resident individuals or domestic companies concerned can be subject to imprisonment of up to 2 years or a fine of up to 20% of the amount in violation.

Individual and legal entities that can be exempt from this FBAR reporting requirement are as follows:

- A foreign resident who has/had his/her domicile or place of residence in the Republic of Korea for not more than five years in total from ten years before the end of the relevant year subject to reporting.
- A Korean national residing abroad who can be determined as nonresident according to the IITL.
- National/local government organizations and public organizations/financial institutions defined under the provisions of the Public Organization Management Law of Korea.
- An individual whose overseas financial bank account information is available to the Korean tax authorities for verifications through a FBAR report submitted to the tax authorities by another "related individual of overseas financial bank account". The related individual of overseas financial bank account is defined as all individuals who hold the joint bank account (공동명의계좌) or the actual beneficial owner of the account opened under the borrowed name (차명계좌).

■ Special Tips for Companies Having Foreigner (non-Korean) Employees

● At Hire/Initial Payroll Setup

Under the IITL, 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 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 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 year-end, year-end 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 foreigner employees.

The employer (withholding agent) should submit the flat tax rate application form to 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				

Unless the foreigner (non-Korean) employee concerned is eligible for waiver of statutory social insurances and submits waiver applications with proper supporting documents required by the Korean social insurance agencies, the foreigner 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".



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

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