

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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■ Proposed South Korean Tax Law Changes in 2022

On July 26, 2021, the Ministry of Economy and Finance (MOEF) of Korea announced the government tax reform proposals to be implemented from 2022. The proposed tax law changes will be finalized after the National Assembly passes the bill. We summarized the major proposed tax law changes in 2022 to keep you updated as follows.

● Revision of interest deduction limitation rule

Currently, interest expense on loan from foreign (non-Korean) related parties are not deductible if the net interest expense exceeds 30% of the earnings before interest, taxes, depreciation and amortization (“adjusted taxable income”).

Under the proposal, if the adjusted taxable income is less than zero, the adjusted taxable income will be deemed to be zero and thus, all the net interest expense shall not be deductible. In addition, the proposal clarifies the order for the calculation of non-deductible interest expense. If there are debts with different interest rates, the interest deduction denial is applied starting with the higher interest rate. If both have the same interest rate, the debt with the most recent borrowing date will be denied first. If the interest rate and borrowing date are the same, then the limitation shall be calculated in proportion to the amount borrowed.

The proposed change will become effective from the fiscal year beginning on or after January 1, 2022.

● Introduction of a new deduction limit for the existing net operating losses (“NOL”) in case of business transfer

Under the proposal, the existing NOL of the transferee company cannot be utilized to offset the taxable income from the business transferred from the acquired company if the following conditions are met:

- (i) The business transfer is made between related parties, and
- (ii) 70% of more of the assets and 90% or more of net assets are transferred to the transferee company.

The proposal shall apply to the business transfer made on or after January 1, 2022.

● Extension of applicable period of tax credit for enterprises increasing jobs

Currently, a fixed amount of tax credit has been provided to companies who increase employment for a given period (for 2 years for Large-sized companies, for 3 years for Middle-sized companies/SMEs) until the taxable year in which December 31, 2021 falls.

Under the proposal, additional tax credit will be provided temporarily for companies hiring youth, the disabled and seniors in the non-metropolitan area. Further, the tax credit will be applicable until the taxable year in which December 31, 2024 falls.

(Unit: Thousands of Korean Won)

Types of employee	SME		Middle-sized		Large-sized	
	Metropolitan area	Non-metropolitan area	Metropolitan area	Non-metropolitan area	Metropolitan area	Non-metropolitan area
Youth*, the disabled, seniors**	11,000	12,000 → 13,000	8,000	8,000 → 9,000	4,000	12,000 → 13,000
Other full-time employees	7,000	7,700	4,500	4,500	-	-

* Youth employees: Employees aged between 15 and 29 years. If the relevant employees have completed

military service, the employees each of whose age calculated by deducting the period of military service from the present age does not exceed 29 shall be included.

*** Seniors: employees aged 60 or older as of the employment contract date. Effective from the tax year starting on or after January 1, 2021.*

The proposed change shall apply to the increase in employees made in the taxable year in which December 31, 2021 and 2022 falls.

● **Extension of sunset period of income tax reduction benefit available for employees of small and medium companies**

Currently, individual income tax reduction benefit has been provided for certain employees who are hired by SMEs. This rule was supposed to expire at the end of 2021. Under the proposal, this rule will be extended to December 31, 2023.

	Current	Proposed
Employees eligible for this income tax reduction benefit	Youth employees aged 34 or younger, employees aged 60 or older, employees with disability, and career-interrupted female employees who are hired between Jan 1, 2012 and Dec 31, 2021 (or between Jan 1, 2014 and Dec 31, 2021 for employees aged 60 or older, employees with disability)	(Same)
Income tax reduction rate	70% (90% for youth employees) (up to KRW 1.5 mil max limit for each taxable period)	(Same)
Reduction period	3 years from the initial employment date (5 years for youth employees)	(Same)
Applicable period	Until December 31, 2021	Until December 31, 2023

● **Expansion of scope of stock options eligible for a deduction of the difference between the exercise price and the fair market value of the stock**

Current	Proposed
Scope of stock options eligible for a deduction of the difference between the exercise price and the fair market value of the stock <ul style="list-style-type: none"> o Stock options granted pursuant to the Korean Commercial Law, the Act on Special Measures for the Promotion of Venture Businesses, and the Act on Special Measures for the Promotion of Specialized Enterprises for Materials and Components o <Addition> 	(Same) <ul style="list-style-type: none"> o Stock options granted pursuant to the Labor Welfare Framework Act

The proposed change shall apply to stock options exercised on or after the enforcement date of the Presidential Decree.

■ Other Tax Tips

● Reporting requirements of transfer pricing (“TP”) documentation

A company including a foreign-invested company must submit the following TP documents within 6 months from the end of each fiscal year to the tax authorities:

- Report on the method of arm's length price determination
- Schedules of international transactions with Overseas Specially Related Parties (“OSRP”)
- Summarized Profit and Loss Statements of OSRP

A company may omit submission of the “Report on the Method of Arm’s Length Price Determination”, if the company meets one of the following conditions:

- goods transactions (including both sales and purchase transactions) with its OSRP must not exceed KRW 5 billion in total AND service transactions (including both services rendered and received) with its OSRP must not exceed KRW 1 billion in total; or
- goods transactions (including both sales and purchase transactions) with its each OSRP must not exceed KRW 1 billion AND service transactions (including both services rendered and received) with its each OSRP must not exceed KRW 200 million.

Also, a company may omit submission of the “Summarized Profit and Loss Statement of OSRP”, if goods transactions (including both sales and purchase transactions) with its concerned OSRP does not exceed KRW 1 billion AND service transactions (including both services rendered and received) with its concerned OSRP does not exceed KRW 200 million.

If a company does not submit the reports explained above within the filing due date and fails to submit the reports upon request of the tax authorities, a penalty up to KRW 100 million may be assessed.

● Reporting requirements of Base Erosion and Profit Shifting (“BEPS”)

In addition to the requirements of TP documentation, Multinational Enterprises (“MNE”) which meet the following conditions are also required to submit the Combined Report of International Transactions (“CRIT”), which is comprised of three elements (Local file, Master file, and Country-by-Country (“CbC”) report).

CRIT	Local file and Master file	CbC report
Conditions	<p>Domestic corporations and foreign corporations with a domestic place of business that satisfy the following criteria:</p> <p>a. Annual gross sales of an individual entity exceed KRW100 billion; and</p> <p>b. Annual overseas specially related party transaction exceeds KRW 50 billion.</p>	<ul style="list-style-type: none"> • 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 KRW1 trillion during the preceding fiscal year. • In the case where the ultimate parent company is a foreign 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: <ul style="list-style-type: none"> a. There is no obligation to submit a CbC

		<p>report under the laws and regulations of the country where the ultimate parent company is located; OR</p> <p>b. There is no arrangement for the exchange of CbC report information between South Korea and the country where the ultimate parent company is located; OR</p> <p>c. The Korean affiliated company did not submit CbC Reporting Notification within 6 months from the end of each fiscal year (e.g., by June 30, 2021 for the Korean company having the fiscal year ended December 31, 2020).</p>
Due date	Within 12 months from the end of each fiscal year (e.g., by <u>December 31, 2021</u> for the MNE having the fiscal year ended December 31, 2020).	

In the case where the threshold condition of Local file, Master file, and CbC report is satisfied, MNE failing to submit such reports (in whole or in part) or found to have submitted incorrect information may be subject to penalties up to KRW 30 million per report.

■ Statutory Social Insurance Updates for 2022

● Rate change for the statutory National Health Insurance and Long-Term Care for the Elderly in 2022

Effective from January 1, 2022, the insurance rate of the statutory National Health Insurance will be increased from 6.86% to **6.99%** of monthly salary income (excluding non-taxable income). Employer and employee portion will be changed from 3.43% to 3.495% each. The insurance rate of the Long-Term Care for the Elderly (which is the surcharge of the national health insurance) will also be increased from 11.52% to 12.27% of the National Health Insurance premiums.

	Before	From January 1, 2022	
National Health Insurance (NHI)	3.430%	3.495%	Won 3,523,950 of monthly contribution ceiling each
Long-Term Care Insurance for the Elderly	11.52%	12.27%	Assessed at 12.272% of NHI premium above

As an example, if an employee's monthly average taxable salary is KRW 5,600,000, the employee portion of the national health insurance and the long-term care for the elderly insurance premiums are calculated as follows:

(Korean Won)

	2021	2022
National Health Insurance	5,600,000 * <u>3.43%</u> = 192,080	5,600,000 * 3.495% = 195,720
Long-Term Care Insurance	192,080 * <u>11.52%</u> = 22,128	195,720 * 12.27% = 24,015

The total national health insurance rate including the long-term care for the elderly rate will be 3.9238% for employer and employee, respectively.

● **Rate change for the statutory Employment (Unemployment) Insurance in 2022**

Considering the financial status of the Employment (Unemployment) Insurance Fund and expectations for an economic recovery after COVID-19, the government will raise the employment insurance rate by 0.2% from 1.6% to 1.8% (employees and employer each bear 0.1% increase portion each) **from July 1, 2022.**

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

■ **Labor Law Updates**

● **New monthly pay slip format requirements came into force from November 19, 2021**

With the amended labor law provisions in Korea that came into force effective from November 19, 2021 (Article 48 of the Labor Standards Act and Article 27-2 of the Enforcement Decree), employers in Korea shall be required to provide employees with new monthly pay slip format to include essential information including the following elements:

- (1) Name, Date of Birth, Employee Identification Number
- (2) Payday, Salary Total Amount
- (3) Breakdown of salary amount by pay element including base salary, allowances, bonus, performance bonus (for any payment in kind other than cash, the name of the goods, number and total value)
- (4) Calculation methodology of salary components if such salary components vary by number of days worked, number of hours worked, etc. (including the hours worked in case of overtime pay, night time pay and off-day work pay) **(newly added under the amended labor law provisions)**
- (5) Deduction details including the breakdown by deduction element and total deduction amount

To be fully compliant with the amended labor law provisions above, the local payroll program Duzon recently completed updating their system to incorporate this change and we Hanul LLC (Crowe Korea) are now ready to offer pay slips in a new format to clients starting from December 2021 payroll.

If your company is using a payroll program other than Duzon, you should check with your payroll program provider (and/or your payroll service provider) whether they are fully compliant with this new requirement in Korea.

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

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