한울회계법인
Hanul LLC

Newsletter

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Bi-monthly Newsletter of Hanul LLC

Smart decisions. Lasting value.

Contents

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.

■ Recent Korean Tax Law Changes

● Amendment to the Enforcement Decree of the International Tax Coordination Law related to global minimum tax pre-announced

Ahead of the implementation of the global minimum tax scheme starting from January 1, 2024, the Ministry of Economy and Finance ("MOEF") pre-announced the amendment to the Enforcement Decree of the Korean International Tax Coordination Law ("ITCL") as of November 9, 2023 to regulate matters as delegated by the Law.

The global minimum tax, agreed upon in the OECD/G20 Inclusive Framework on BEPS (IF), is designed to prevent tax competition among countries and create a fair competition environment. Each country is required to implement the global minimum tax through the legislation of relevant rules. In this regard, the amendment to the ITCL, including the global minimum tax rules, was passed by the Korean National Assembly in December 2022.

The amendment to the Enforcement Decree of the ITCL is expected to enable Korean taxpayers to assess and analyze the impact of the implementation of the global minimum tax scheme, including determination of its applicability and calculation of additional tax liabilities.

The amendment will be officially promulgated in December 2023 after going through necessary procedures including the pre-announcement of legislation (November 9 to December 7, 2023), vice-ministerial and cabinet meetings, etc.

Key Contents of the Amendment include the following:

1) Overview:
   When one country applies an effective tax rate that is lower than the minimum tax rate (15%) to a multinational corporation, additional taxing rights shall be granted to other countries.
2) Target:
   A multinational corporate group with consolidated financial statement revenues exceeding EUR 750 million (approx. KRW 1 trillion) for at least 2 of the last 4 business years.
3) Tax Amount:
   Additional taxation is applied to the extent that the effective tax rate calculated on a country-by-country basis falls below the minimum tax rate (15%).
4) Effective Date:
   Applicable for the business year commencing on or after January 1, 2024.

■ Other Tax Updates

● Small and medium-sized enterprises (SMEs) with excellent job creation or investment expansion to be excluded from FY2022 tax audit

The National Tax Service ("NTS") announced on October 25, 2023 that the SMEs will be excluded from the target list of periodic tax audits for corporate income tax or individual income tax returns filed for the fiscal year 2022 if certain requirements are met.

SMEs eligible for exclusion from FY2022 tax audits are as below.

- SMEs[1)] as specified under the Korean Special Tax Treatment Control Law ("STTCL") with a revenue of less than KRW 150 billion for the fiscal year 2022 (less than KRW 50 billion for corporations with total assets of KRW 200 billion or more or professional personal service providers);

  1) Determined based on FY2022, and grace period (i.e., considered as SMEs up to 3 tax years after exceeding the criteria for SMEs) shall not be considered.

- For SME with excellent job creation -
  Required submission of 'Job Creation Plans' to the National Tax Service through Hometax web portal by November 30, 2023 and implementation of the plans to increase the number of full-time employees in 2024 by more than 2% or 3% (and at least one new full-time employee) compared to the numbers in 2023.

  Required job creation ratio by the amount of revenue:

Revenue for FY2022	less than KRW 50 billion	from KRW 50 billion to not more than KRW 150 billion
Increase requirement	2%	3% or more

- For SMEs with investment expansion -
  Required submission of 'Investment Expansion Plans' to the National Tax Service through Hometax web portal by November 30, 2023 and implementation of the plans to expand the investment (in machinery and specific facilities defined in Article 24 of the STTCL) in 2024 by more than 10% or 20% (and at least one new full-time employee) compared to the numbers in 2023.

  Required investment expansion ratio by the amount of revenue:

Revenue for FY2022	less than KRW 50 billion	from KRW 50 billion to not more than KRW 150 billion
Increase requirement	10%	20% or more

This exclusion from FY2022 tax audit shall be disallowed if a company fails to satisfy the requirements of either increased employment or increased investment.

OECD Multilateral Convention to implement Amount A of Pillar One and the Explanatory Statement released

Based on the press release from the MOEF, the Task Force on Digital Economy (TFDE) of the OECD/G20 Inclusive Framework (IF), responsible for discussions on Pillar One - addressing the allocation of revenues to market jurisdictions of multinational enterprises (Amount A), released the draft of the Multilateral Convention on Pillar One (MLC) and its Explanatory Statement on October 11, 2023.

The currently released draft of the MLC includes the agreements reached so far by members of the IF concerning Amount A. However, for a few specific items which some countries express dissent on (for example, details on how to calculate estimated taxes to apply the safe harbor rule, scope of tax certainty for issues related to Amount A, etc.), are annotated in footnotes in the MLC.

By releasing the draft of the MLC, the TFDE aims to enhance transparency in the discussions on Pillar One, facilitate utilization for member countries' domestic processes, resolve remaining issues, and prepare the final version of the MLC for signature.

The OECD/G20 IF plans to continue discussions to reach an agreement on the final version of the MLC on Pillar One by the second half of 2023, following the Outcome Statement approved by 138 member countries on July 11, 2023. It is noted that among the 143 countries, five countries (Russia, Belarus, Sri Lanka, Canada, and Pakistan) have refused approval.

● Korea - Iran Tax Treaty amendment protocol initialed

The MOEF announced on November 11, 2023 that the MOEF had concluded negotiations for the amendment of the Korea - Iran Tax Treaty which was held in Seoul from November 6 to 8, 2023. Through the negotiation talks, an agreement was reached and the amendment protocol was initialed (prior to final signing and ratification).

The amended Korea-Iran Tax Treaty includes the following significant changes.

1) Mutual agreement procedure:
    - Expanding the countries from which a taxpayer can request mutual agreement, currently the country of which a taxpayer is a resident, to both contracting countries.
    - Extending the deadline for the application of mutual agreement, from currently within two years to within three years from the first notification of the action resulting in taxation not in accordance with the tax treaty.
2) Exchange of tax-related information:
    - Expanding the scope of information exchange related to taxation and strengthening the obligation of mutual assistance.
3) Principle for denying treaty benefits:
    - Introducing principles regarding the qualification for treaty benefits, especially denying the eligibility for treaty benefits when the application of specific treaty benefits is the primary purpose of the transaction.

The amendment to the Korea-Iran Tax Treaty is expected to take effect after both countries formally sign the agreement and ratified through parliamentary approval thereof.

■ HR & Payroll Tips

● Submission frequency shortened for simplified withholding tax statement for salary income and other income related to temporary personal services starting from January 2024

Previously all companies (withholding agents) who pay salary and wage income were required to submit the simplified withholding tax statement for salary and wage income (상용근로소득 간이지급명세서) to the governing district tax office on <u>a semi-annual basis</u> in January and July of every year.

However, under the amended Individual Income Tax Law (IITL) of Korea, such simplified withholding tax statements for wage and salary income shall be filed with the governing district tax office <u>**on a monthly basis**</u>

by the end of the following month starting with the income paid on or after January 1, 2024. In addition, a simplified withholding tax statement for other income related to temporary personal services (인적용역관련 기타소득 간이지급명세서) must also be submitted **on a monthly basis** by the end of the following month starting with the income paid on or after January 1, 2024.

For non-filing or false filing, there will be 0.25% penalties on non-reported or falsely reported income amount. If the company submits simplified withholding tax statement within one month from the original due date, a reduced penalty at 0.125% shall be imposed for late filing.

In this connection, however, as this submission frequency change from bi-annual to monthly under the amended IITL is expected to result in significant administrative burden to companies as withholding agents, there is a tax reform bill proposed by the members of the National Assembly which aims to maintain the existing bi-annual submission frequency for the simplified WHT statement for salary and wage income. Therefore, it is necessary to monitor further development of this proposed tax reform bill in the coming months.

● Statutory national health insurance premium rate to freeze in 2024

On September 26, 2023, the Ministry of Health and Welfare announced that the national health insurance premium rate for the year 2024 will remain unchanged at 7.09% (3.545% each for employer and employee). Also, the long-term care insurance for the elderly (LTCI) will remain unchanged at 12.81% (each for employee and employer) as summarized below.

Social Insurance:	2023	From 2024	Remark
a. National Health Insurance (NHI)	3.545%	Remain unchanged	Won 3,653,550 of monthly contribution ceiling each
b. Long-Term Care Insurance for the Elderly (LTCI)	12.81%	Remain unchanged	Assessed at 12.81% of NHI premium above

● Sick leave requirements in Korea and statutory social insurance treatment during the sick leave period

Sick leave is required by the statute only in connection with “occupational” injuries or diseases. Employee on such leave is entitled to receive at least 60 percent of his average wage during such leave period. In case of “non-occupational” injuries or diseases, the prevailing practice in Korea is to grant some period of no pay sick leave even though it is not legally mandated, and entitlement is usually based on length of service with the company.

During the sick leave period, employees shall be eligible to apply for suspension/waiver of 4 statutory social insurance payments as summarized below.

1) National Health Insurance (only suspension of insurance payment allowed)
   - Suspension of national health insurance payment is allowed if sick leave period is minimum 1 month or longer.
   - Since the employee will still be covered under the national health insurance even during the sick leave period, the national health insurance premiums will be assessed during the sick leave period, but payment will be suspended and postponed until the employee returns to work (can be paid all at once or in installments upon returning to work).

2) National Pension (waiver of payment obligation)
   - Employee who is on sick leave shall be eligible to apply for waiver of national pension contribution payment (effective from the month of the waiver application).
   - In the case where an employee receives salaries during the sick leave period, the employee shall not be eligible for waiver of payment in principle. As an exception, if the employee receives salaries during sick leave, but the amount is less than 50% of the monthly income base used for national pension assessment before the start of sick leave, the employee will still be eligible to apply for the waiver.
3) Employment Insurance & Industrial Accident Compensation Insurance (waived of payment obligation)
   - Employee will be eligible to file for waiver of insurance payment during sick leave.

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

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