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Recent Developments in International Taxation

Republic of Korea

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Recent tax law changes for 2022

The tax law proposals issued by the Ministry of Economy and Finance passed the Korean National Assembly on 2 December 2021. The main changes to the tax law involving foreign corporations, foreign invested corporations or cross-border transactions are addressed below. The changes took effect from 1 January 2022, unless otherwise stated.

Corporate Income Tax Act (CITA)

OBLIGATION TO SUBMIT DATA ON THE STATUS OF THE LIAISON OFFICE OF FOREIGN CORPORATIONS (ARTICLE 94-2)

If a foreign corporation has an office (liaison office) in Korea that does not engage in business activities that generate revenue in Korea but only performs non-business functions, such as business liaison, market research and information collection, it must submit current status data to the head of the tax office with jurisdiction over the location of the liaison office by 10 February of the following year (Article 94-2 of the CITA). Current status data should include the following: (1) general information of the liaison office, such as the name of the liaison office and identification number; (2) name, location, transactions and investments in Korea of the foreign corporation that established the liaison office; (3) operational status of the liaison office, such as the status of its office lease and status of employees; and (4) total amount of invoices or tax invoices received, if any. Current status data should be prepared as of 31 December of each year (Article 133-2 of the Presidential Decree of the CITA).

The purpose of Article 94-2 of the CITA is to secure data to prevent tax evasion through the liaison office.

VAT Act (VATA)

OBLIGATION TO RETAIN AND SUBMIT THE TRANSACTION DATA OF THE FOREIGN BUSINESS OPERATOR THAT SUPPLIES ELECTRONIC SERVICES IN KOREA (ARTICLE 53-2 (6))

A foreign business operator that supplies electronic services, such as games, audio or video files, software through information and communications networks, to consumers in Korea is required to register as a business operator within 20 days from the date of commencement of the business in a convenient method as prescribed by the Presidential Decree (Simplified Business Registration).

The newly enacted VATA prescribes that a foreign business operator that has registered as a simplified business operator should retain transaction data for the supply of electronic services (including transaction data in the case of supplying services for the taxable business or tax-free business of the registered business operator) for a period of five years (Article 53-2 (6) of the VATA). The transaction data should include: (1) types of electronic services provided; (2) price and VAT of services provided; (3) period of supply of electronic services; and (4) registration number (in cases in which the recipient is a business operator), as well as the name and trade name of the recipient (Article 96-2 (8) of the Presidential Decree of the VATA). The National Tax Service may request a foreign business operator that has registered for simplified business registration to submit an electronic service transaction statement in order to confirm the adequacy of the VAT return (Article 53-2 (7) of the VATA).

The newly revised VATA intends to reinforce the monitoring of foreign businesses that supply electronic services in Korea and applies to electronic services that are supplied on or after 1 July 2022.

OBLIGATION OF THE LIAISON OFFICE TO SUBMIT A TABLE OF TOTAL TAX INVOICES

The state, local governments, local government associations and other persons prescribed by the Presidential Decree that have been issued a tax invoice are required to submit a table of total tax invoices to the head of the tax office with jurisdiction over the place of tax payment within 25 days after the end of the relevant taxable period (Article 54(5) of the VATA). The newly amended Presidential Decree of the VATA adds the liaison office of a foreign corporation within the scope of taxpayers subject to mandatory submission of such a table of total tax

invoices (Article 99(5) of the Presidential Decree of the VATA).

The newly revised article applies to goods and services that are supplied on or after 1 July 2022.

Adjustment of the International Taxes Act (AITA)

RATIONALISATION OF TRANSFER PRICING TAXATION UNDER SPECIAL ECONOMIC CIRCUMSTANCES (ARTICLE (9) OF THE IATA AND ARTICLE 15(7) OF THE PRESIDENTIAL DECREE OF THE AITA)

In consideration of special economic circumstances, such as Covid-19, the newly revised Article 15(7) of the Presidential Decree of the AITA prescribes that when calculating the arm's length price, if it is necessary to take into account special economic crisis situations, such as an economic downturn and mass unemployment, then transactions involving one or more companies incurring losses due to changes in economic conditions can also be used comparably between a resident and foreign-related party.

In addition, the newly revised Article 9 (2) of the AITA prescribes that, in determining and rectifying the arm's length cost allocation, the amount recalculated may be used as the arm's length cost allocation amount if it is recognised that costs could not be allocated as originally agreed upon due to natural disasters or other force majeure reasons.

The newly revised AITA reflects the Organisation for Economic Co-operation and Development (OECD) Guidance on the transfer pricing implications of the Covid-19 pandemic.

ESTABLISHMENT OF A BASIS FOR ESTIMATING THE ARM'S LENGTH PRICE REGARDING CASH POOLING TRANSACTIONS WITHIN A MULTINATIONAL GROUP

Article 11-2 of the Presidential Decree of the AITA was newly established to provide a method for calculating the arm's length price for cash pooling transactions. Cash pooling transaction refers to a transaction that manages the liquidity in a group of companies composed of residents and offshore-related parties by selecting a cash pooling leader, and managing the bank accounts opened and held by each constituent company at the corporate group level. The newly amended regulation prescribes that, in determining the arm's length price of a cash pooling transaction, the following applies: (1) in considering the appropriate reward of the cash pool leader, the arm's length price of the service transaction or cash loan transaction should be applied based on the functions performed, risks borne and assets used; and (2) in considering the remuneration of the cash pool members, the arm's length interest rates for participating in consolidated accounts should be applied, and if there is no consolidated account, compensation should be calculated in proportion to the expected benefits, such as interest expenses that decrease as a result of participating in the cash pooling arrangement.

Article 11-2 of the Presidential Decree of the AITA was newly added by reflecting OECD transfer pricing guidance.