NEWSLETTER

April 2024

Tax Group

CONTACT

Senior Foreign Attorney
Tom KWON

T: +82.2.6386.6627
E: tom.kwon@leeko.com

Senior Foreign Attorney
Jung-hong KIM

T: +82.2.6386.0773
E: junghong.kim@leeko.com

Senior Foreign Attorney
Steve Minhoo KIM

T: +82.2.6386.6271
E: steve.kim@leeko.com

C.P.A.
Sang Won LEE

T: +82.2.6386.7907
E: sangwon.lee@leeko.com

Foreign Attorney
Ye Jin OH

T: +82.2.772.0887
E: yejin.oh@leeko.com

Korean Tax Regulation Updates for 2024

The draft presidential decree regulations (**Regulation(s)**), released on January 23, 2024 following 2023 Tax Law Amendment announced, has been revised, finalized and published by the Ministry of Economy and Finance (**MOEF**) on February 29, 2024.

The main contents of the Regulations that may be of interest to foreign investors are summarized below:

- **CITL-PD** (Presidential Decree of the Corporate Income Tax Law)
- **IITL-PD** (Presidential Decree of the Individual Income Tax Law)
- **VATL-PD** (Presidential Decree of the of the Value Added Tax Law)
- **ITCL-PD** (Presidential Decree of the International Tax Coordination Law)
- **NBTL-PD** (Presidential Decree of the National Basic Tax Law)
- **STTCL-PD** (Presidential Decree of the Special Tax Treatment Coordination Law)

I. Individual Income Tax for Foreigners

1. Supplemental exclusion requirements for foreign engineers, workers, and returning highly-qualified domestic workers (Articles 16, 16-2, 16-3 of the STTCL-PD)

The eligibility for the income tax reduction for foreign engineers, special flat tax rate for foreigners, and income tax reduction for returning highly-skilled domestic workers are applicable only if the employee is not maintaining a related party status with the company throughout the duration of their employment. This is a change from the last year's Regulations, which assessed the related party status as of year-end (effective for income generated in fiscal years ending on or after February 29, 2024).

2. **Non-taxation of corporate housing provided when applying the special flat tax rate for foreigners (Article 16-2 of STTCL-PD)**

When implementing the special flat tax rate for foreigners, the tax exemption provisions of the IITL are not applicable. However, an exception to this principle has been introduced with respect to corporate housing provided to foreign employees, which will be tax exempt under this new provision. This new Regulation is designed to support the recruitment and retention of foreign workers in Korea (effective for fiscal years beginning on or after January 1, 2024).

II. Government Fiscal Support for Businesses (Tax Credits and Reductions)

1. **Double taxation avoidance due to Russia's suspension of tax treaty implementation (Article 117 of the IITL-PD and Article 94 of the CITL-PD)**

This particular Regulation allows Korean taxpayers to claim the tax credits for the taxes paid in Russia in excess of the reduced tax rate under the South Korea-Russia tax treaty to load off burdens of taxpayers caused by the unilateral suspension of tax treaty by Russia (effective for foreign taxes paid after August 8, 2023).

2. **Expanded coverage of "New Growth Engine/Emerging, Proprietary, and National Strategic Technologies" for the purpose of tax credits (Appendices 7 and 7-2 of the STTCL-PD)**

Through the expansion of the scope of new growth engine/emerging and proprietary technologies and national strategic technologies listed in the Appendix of the STTCL-PD, the amended Regulations is geared toward further supporting companies investing in R&D and facilities.

- The "defense industry" has now been incorporated into the categories for new growth engine/emerging and proprietary technologies. Furthermore, 15 new technologies have been added, and the scope of the existing 8 technologies has been broadened.
  - The 15 "new technologies" include i) large nuclear power plant manufacturing technology, ii) non-coding robot automation technology, iii) nano-silicon cathode material manufacturing technology, iv) ammonia power generation technology, etc.
  - The broadened scope of existing 8 technologies include i) technologies related to autonomous driving records in the field of future automobiles and ii) new drug candidate manufacturing technologies in the field of robotics.
- In the category of national strategic technologies, 4 new technologies have been introduced, and the scope of 1 existing technology has been expanded.
  - The 4 new technologies include technologies for equipment and components for the OLED pixel formation and encapsulation process in the display sector, design and manufacturing technology for hydrogen gas turbines (blended and all-electric) in the hydrogen sector, hydrogen reduction steel technology, and hydrogen storage efficiency technology.
  - The expanded scope of 1 existing technology includes HBM (High Bandwidth Memory) to next-generation memory semiconductor design and manufacturing technology.

The above changes to the Regulations have following tax credit implications:

(1) Tax credit for R&D and workforce development expenses (Article 10 of the STTCL-PD)

The expansion of the scope of new growth engine/emerging, proprietary, and national strategic technologies, receiving higher rates of tax credits for general research and development (R&D) as well as human resources development expenses, aims to expand governmental support for R&D investments in promising industries and high-tech strategic sectors. (effective for expenditure made on or after January 1, 2024).

(2) Integrated Investment Tax Credit (Article 10 of the STTCL-PD)

With the expansion of the scope falling into the “National Strategic Technologies” the range of related assets eligible for investment tax credits has been also expanded. This enhancement increases governmental support for companies investing in assets within these relevant fields (effective for expenditures made on or after January 1, 2024).

3. Expanded coverage of “New Growth Engine/Emerging, Proprietary, and National Strategic Technologies” for the purpose of tax credits (Appendices 7 and 7-2 of the STTCL-PD)

Tax credit for the production expenses of video contents in Korea has been enhanced by introducing an additional tax credit rate. In addition to the existing tax credit of 5% and 10% of the production expenses for large and middle market enterprises, respectively, additional 10% will be credited, in which case total of 15% tax credit is available for large enterprise and 20% for middle market enterprises as a % of eligible production expenses. For small and medium-sized enterprises, additional tax credit of 15% will be provided in addition to the existing 15%, allowing 30% tax credit in total. This additional tax credit is applicable if the proportion of domestic expenses in the total production cost is 80% or more, and if three or more of the specified requirements are met (applicable to production costs incurred on or after January 1, 2024):

- At least 80% of writer/author labor expense is paid for Koreans
- At least 80% of actor/actress salary is paid for Koreans
- At least 80% of post-production costs are expensed in Korea
- Owns at least 3 major IP rights (among broadcasting rights, transmission rights, performance rights, reproduction rights, distribution rights, and derivative works rights under the Copyright Law)

4. Increase Tax Reduction for Businesses Set up in the Jeju Investment Promotion Zone (Article 116-15(1) of the STTCL-PD)

The criteria for tax reduction benefits available to companies operating within the existing Jeju Investment Promotion Zone have been updated to broaden the scope of the food manufacturing industry. This expansion now encompasses the manufacturing of animal and vegetable oils, processing and production of grain/starch products, other food manufacturing, as well as the manufacturing of animal feed and delicatessen products. Furthermore, the beverage manufacturing industry's scope has been extended to include the manufacturing of alcoholic beverages. These modifications aim to encourage more investment into the Jeju Investment Promotion Zone (Effective from the fiscal year to which February 29, 2024 belongs).

III. International Taxation

1. Allowing Special Rules for CFC (Controlled Foreign Company) Foreign Holding Companies (Article 64 of the ITCL-PD)

In determining whether a foreign holding company is exempt from the Controlled Foreign Corporation (CFC) Rule, the criteria for calculating the income ratio (interest and dividend income / gross income) have been made more flexible. This flexibility has been achieved by including not only interest and dividend income received from subsidiaries but also interest income generated from deposits and savings accounts in the calculation of "interest and dividend income" comprising the numerator of the income ratio (Effective from the fiscal year to which February 29, 2024 belongs).

2. Global Minimum Tax

(1) Detailed provisions for calculating top-up tax for global minimum tax

The provisions for calculating the Global Minimum Tax have been refined to ensure more accurate and effective implementation by taxpayers in Korea (effective for fiscal years beginning on or after January 1, 2024).

- The Regulations now include a clarification regarding the special case where permanent establishment (**PE**) losses are incorporated into the calculation of the GloBE income of a headquarter (Article 107-2 of the ITCL-PD);
- The Regulations specify the method for allocating the top-up tax to subsequent fiscal years in scenarios where the top-up tax rate exceeds 15% (in the case where the adjusted covered tax is negative and net GloBE income is positive) (Article 116-2 of the ITCL-PD);
- The criteria for the Qualifying Domestic Minimum Top-Up Tax (**QDMTT**), which is exempt from the global minimum tax's top-up tax, have been clarified. (Article 118-2 of the ITCL-PD); and
- The methodology for calculating GloBE income and losses has been clarified in instances where the tax laws of the country hosting a Constituent Entity (**CE**) (which includes an Ultimate Parent Entity (**UPE**) of a Multinational Group, any entities consolidated under the UPE and PEs thereof) mandate adjustments to the carrying amount of assets and liabilities at fair value (Article 129(4) of the ITCL-PD).

(2) Penalty Waiver for GloBE Information Return (**GIR**) Filing Error in Transition Periods (newly enacted in Article 144(7) of the ITCL-PD)

The criteria for waiving penalties for erroneous GIR filing during the transition period by in-scope domestic CEs have been clarified. The transition period encompasses taxable years that begin before December 31, 2026, and end before June 30, 2028 (effective for fiscal years beginning on or after January 1, 2024).

Waiver Criteria:

Provided that the in-scope CEin Korea has made a good faith effort to understand and comply with the domestic law governing GloBE rule and the QDMTT, which have been agreed internationally, the penalty waivers will be granted if the entity meets one of the following criteria:

- Full disclosure of GloBE income and loss calculations to the Korean tax authorities;
- The reporting CE informs the Korean tax authority of the fact that an error has been made in the GIR filed, and it is recognized that there is a reasonable cause for the reporting CEto make such error or mistake;
- The domestic CE demonstrates to the Korean tax authority that the failure to comply is due to an unclear provision of an internationally agreed GloBE, rule and the demonstration is based on a reasonable interpretation of such unclear rule;
- The domestic CE makes a representation to the Korean tax authority that the failure to comply with the internationally agreed GloBE rule was caused by the domestic constituent entity's lack of knowledge of such rule, and the representation is reasonable in light of the early implementation of the GloBE rule.
- The domestic CE demonstrates to the Korean tax authority that its noncompliance with the obligation to file a GIR does not relieve it of the burden of paying top-up tax during the transition year or subsequent years.

(3) Requirements for the Qualified Undertaxed Payments Rule (UTPR) (Newly enacted in Article 125(4) of the ITCL-PD)

In the 2023 tax law amendment, the first year of implementation for the UTPR top-up tax was postponed from 2024 to 2025.

In the Regulations, the MOEF clarified the requirements for the "qualified" UTPR regime which is effective from January 1, 2025, as follows:

- Implemented in a manner consistent with the results under the internationally agreed GloBE rules;
- the adopting country does not provide any benefits (including tax incentives and subsidies) that are related to GloBE rule to CE bearing a top-up tax.

If you have any questions or comments regarding this Tax Alert, please do not hesitate to contact one of the tax experts at Lee & Ko.

Lee & Ko

Seoul, Korea | PanGyo, Korea | Beijing, China | Ho Chi Minh City, Vietnam | Hanoi, Vietnam

+82.2.772.4000 | mail@leeko.com | www.leeko.com