Lee & Ko

NEWSLETTER

September 2022

Tax Group

2022 Proposed Korean Tax Law Amendments

••• International Taxation

The Ministry of Economy and Finance (**MOEF**) released "2022 proposed tax law amendments" (the **Proposed Amendments**) on July 21, 2022 which would generally be effective from 2023.

The Proposed Amendments were submitted to the National Assembly on September 2, 2022 to reflect the new administration's economic policy—the overall focus on easing the heavy tax burden on companies and supporting them to enhance their competitiveness. To this end, new regulations will be established while the existing tax and reduction regulations will be adjusted. These changes will make an impact on various tax laws enumerated as below:

- CITL (Corporate Income Tax Law)
- IITL (Individual Income Tax Law)
- VATL (Value Added Tax Law)
- ITCL (International Tax Coordination Law)
- NTBL (National Tax Basic Law)
- STTCL (Special Tax Treatment Coordination Law)
- STTL (Securities Transaction Tax Law)

The main contents of the Proposed Amendments are summarized below for taxpayers to sufficiently cope with potential international tax issues by being familiarized with and utilizing them.

1. Lowering the Highest Corporate Tax rate and Adjusting Corporate Tax Brackets (Article 55 of the CITL)

Small and Medium-sized enterprises(**SMEs**) having tax base of KRW 500 million or

CONTACT

Tom KWON

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

Jung-hong KIM

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

Jay SHIM

T: +82.2.2191.3235
E: jay.shim
@leeko.com

Yeonho CHANG

T: +82.2.772.5942
E: yeonho.chang
@leeko.com

Steve Minhoo KIM

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

Ye Jin OH

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

less shall benefit from a 10% special tax rate with the following exceptions where: ① controlling shareholders hold more than 50% of the shares; or ② where the real estate rental business is their main business.

Tax Brackets	Revised Corporate Tax Rate	
KRW 500 million or less	10% (SMEs)	20%
KRW 500 million ~ 20 billion		
More than KRW 20 billion	22%	

As the highest corporate income tax rate is lowered from 25% (27.5% including local tax) to 22% (24.2% including local tax), the tax burden on companies exceeding the tax base of KRW 300 billion is expected to be significantly reduced.

2. Introduction of a Dividend Received Deduction (DRD) for Dividends from Foreign Subsidiaries and Adjustment of the DRD rate for Dividends from Domestic Subsidiaries

(i) In case where ① a domestic company has shareholding of 10% or more in overseas subsidiaries; and ② it is held for at least six months as of the dividend record date, the new law will allow a 95% DRD (Articles 15, 21, 41, 57, 57-2 of CITL amended, Article 18-2 of CITL newly established).

(ii) Also, the requirements for overseas subsidiaries subject to indirect foreign tax credit will be eased as follows: ① shareholding of 10% or more, ② holding for at least 6 months as of the dividend record date (Paragraph 5 Article 57 of CITL, Paragraph 9 Article 94 of Presidential Decree (**PD**) of CITL).

(iii) In the case of dividends from domestic subsidiaries, the DRD rate will be adjusted as follows: ① with shareholding of 50% or more, regardless of the type of company, the DRD rate is 100%, ② with shareholding of 30% or more but less than 50%, the DRD rate will be 80%, and ③ with shareholding less than 30%, the DRD rate will be 30% (Articles 18-2 ~ 18-3 of CITL). For those entities that receive dividends in 2023 and 2024, they can opt to apply the previous regulation. Compared to the previous regulation, the DRD rate has increased, and hence holding companies are expected to be less useful due to the overall decrease in the DRD rate.

3. Increased Limitation for Deduction on Losses Carried Forward (Articles 13, 45, 46-4, 76-13, 91 of CITL)

The deduction limit for loss carryforward will increase from the current limit of 60% of taxable income to 80%. Unused losses can continue to be carried forward for 15 years.

4. Abolition of Special Taxation for Facilitation of Investment and Mutually-Beneficial Cooperation, i.e., Accumulated Earnings Tax (Article 100-32 of STTCL)

As part of abolition of regulatory taxes borne by companies, Special Taxation for Facilitation of Investment and Mutually-Beneficial Cooperation (i.e., accumulated Earnings Tax) will be terminated. However, the already reserved earnings for distribution in the following fiscal year, i.e., previously excluded from the tax base for the purpose of the accumulated earning tax calculation, will be grand-fathered and subject to the accumulated earnings tax regime.

5. Expansion of Companies Subject to Consolidated Tax Return (Articles 2, 76-8, 76-19 of CITL)

The companies subject to consolidated tax return will be expanded from “domestic corporation that wholly controls another domestic corporation” to “domestic corporation that controls more than 90%”. In addition, as part of the method of distribution of consolidated income, taxpayers filing a consolidated tax return can opt to keep the losses within the loss-making companies. Also, if the attributable tax amount to any of consolidated subsidiaries is less than 0 on a standalone basis, the method of payment of consolidated corporate tax will be revised in such a way that the consolidated parent company can return the utilized net operating loss to the respective consolidated subsidiaries that incur loss on a standalone basis. The above regulation will apply from the business year beginning on January 1, 2024.

6. Reinforcement of Incentives for the Inflow of Highly-Skilled Foreigners into South Korea

(i) The limit on the application period of the special flat tax rate of 19% for foreigners, which is five years from the start of working in Korea, will be abolished and the special rate will continue to be applied even after the five-year term limit (Article 18-2 of STTCL).

(ii) In addition, the period of income tax reduction for foreign engineers will be extended from the previous five years to ten years (Article 18-2 of STTCL). The period of income tax reduction for those repatriating Korean workers will be extended from the previous five years to ten years, and the application is extended to December 31, 2025 (Article 18-3 of STTCL).

(iii) The foregoing two amendments also apply to those who have already been receiving the income tax reduction as of January 1, 2023.

7. Relaxation of the Criteria of the Capital Gains Tax for Major Shareholders of Listed Stocks (Articles 94, 104, 115, 118-9 of IITL)

The Proposed Amendments will change the shareholders subject to this particular law from the “major shareholders” of domestic listed stocks to “high-value shareholders”, removing the shareholding percentage requirement and replacing it with an absolute holding amount of KRW 10 billion or more. Also, other shareholders related to the principal shareholder such as direct family members, etc. shall be disregarded for purposes of determining whether the holding amount is KRW 10 billion or more. The previous law stated that if the combined shareholding of the principal and other shareholders whose shareholding exceeds a certain percentage was 1 billion won or more, the principal shareholder was subject to capital gains tax. However, the Proposed Amendments imposes capital gains tax only if a shareholder himself holds more than KRW 10 billion. Correspondingly, shareholders with share worth less than KRW 10 billion are excluded from the stock capital gains tax.

8. Adjustment of Period of Reducing Securities Transaction Tax (Article 5 of STTL-PD)

The period of lowering Securities Transaction Tax for KOSPI and KOSDAQ will be adjusted as follows:

	2022	2023 ~ 2024	2025 ~
KOSPI	0.08%	0% → 0.05%	0%
KOSDAQ	0.23%	0.15% → 0.2%	0.15%

9. Imposition of obligation to submit transaction details of virtual assets newly established (Article 120-5 of CITL)

Virtual Asset Service Providers (**VASPs**) for which a filing obligation pursuant to Article 7 of the Specific Financial Information Law has been completed must submit a "Transaction Statement" of the corporations to whom VASPs transferred or lent virtual assets within two months after the end of the quarter.

10. Introduction of Global Minimum Tax (From Article 60 of CITL newly established)

The global minimum tax regime will be introduced in accordance with the Global Anti-Base Erosion (**GloBE**) Model Rules (Pillar Two) set out within the OECD/G20 Inclusive Framework. The global minimum tax is applied to companies that comprise multinational groups with consolidated sales of EUR 750 million or more from two of the previous four business years. If the effective tax rate is less than 15% in the jurisdiction of each constituent entity, a top-up tax must be paid to the jurisdiction. Applicable companies must submit a "GloBE Information Return" within 15 months from the end of the business year, and a penalty of up to KRW 100 million may be imposed if they fail to comply with this reporting regulation. This law will apply from the business year beginning on January 1, 2024.

The minimum tax rate of the global minimum tax system is 15%, but in Korea, the minimum tax rate of some corporations may be less than 15% depending on which tax bracket they fall into, therefore Korean corporations may also be subject to this tax. Also, as explained above, companies subject to the global minimum tax are obligated to submit a "GloBE Information Return," so companies need to be prepared for complying with this procedure.

11. Changes in the Tax System of Insurance Companies under the Insurance Business Law and Overhaul of Tax Base Following the Implementation of IFRS17

(i) As the implementation of IFRS17 changed the insurance company's revenue and expense recognition system, the tax law has been revised accordingly to be in line with IFRS 17.

(ii) First of all, an insurance company subject to IFRS17 is not subject to the liability reserve deduction requirement of the insurance company (Article 30 of CITL, Article 57 of CITL-PD).

(iii) Instead, insurance companies applying IFRS17 may choose to apply one of the following: ① Special Taxation for Accounting-based Conversion Profits (equally including in gross income for three years after deferring conversion profit for four years); or ② Deduction of Reserves for Cancellation Refund (in the case of accumulating reserves for cancellation refund, the method of including deductible expenses through adjustment) (Articles 42-3, 31-2 of CITL newly established).

(iv) The amount deducted from the insurance premium received by the insurer is changed from the previous liability reserve to the 'Contractor reserve - accrual element reserve', and the timing of the recognition of the insurer's revenue is stipulated directly in the education tax law (Paragraph 3 Article 5, and Article 7 of Education Tax Law).(i) As the implementation of IFRS17 changed the insurance company's revenue and expense recognition system, the tax law has been revised accordingly to be in line with IFRS 17.

12. Establishment of a Deduction System for Excess Dividends Carried Forward by Special Purpose Companies (Article 51-2 of CITL, Article 104-31 of STTCL)

Under the Proposed Amendments, if Special Purpose Companies (**SPC**) of asset-backed securitization, Project Finance Vehicles (**PFV**), or any other domestic company falling in any of the prescribed categories in Article 51-2 of CITL make excessive dividends (if the amount of dividend paid exceeds the amount of income in respective year), the excess dividends will be deducted for up to five years, and such excess dividends shall be deducted from the tax base with priority compared to the current year's dividends.

13. Changes in the Method of Calculating Foreign Tax Credit for Income Paid From Indirect Investment Vehicles (Paragraphs 4~7 of Article129 of IITL, Paragraph 1, Article 57 and Article 73 of CITL, Articles 57-2 of IITL and CITL newly established)

If investing through indirect investment vehicles, the method of calculating foreign tax credit will be changed as follows:

Category	Calculation
Calculation of withholding tax (**WHT**) on individual investor fund income and corporate investor investment trust income	(Fund income X WHT rate) - adjusted FTC
Calculation of comprehensive financial investment income for individual investors and amount of tax paid upon final return of corporate income tax by corporate investors	Tax Liability - WHT - adjusted FTC

The above regulations apply from income accrued after January 1, 2025.

14. Revised Procedures for Application of Tax Exemption under the Tax Treaty for Non-residents and Foreign Companies (Article 156-2 of IITL, Articles 98-4, 6 of CITL, Articles 207-2, 8 of IITL-PD, Articles 138-4, 7 of CITL-PD)

Where a non-resident or foreign company apply for tax exemption under a tax treaty, it will require taxpayer to attach documents including the establishment and business registration of a foreign company and those related to domestic source income. The law will be revised to allow the head of tax office to decide and revise if the tax exemption requirements are not met or the contents of the attachment are different from the facts and to request document supplementation.

15. Addition to the Scope of Passive Income Exception in Regard to the Combined Tax System for the Retained Earnings of a CFC (Paragraph 2 Article 29 of ITCL)

In the scope of passive income exception applied to CFC, the profit or loss on the sale of stocks and bonds held by a CFC belonging to the financial and insurance business in connection with the execution of the business shall be excluded.

16. Supplement to the Secondary Liability for the Prevention of Tax Evasion through Foreign Companies (Article 40 of NTBL)

Additional secondary liability is added where a primary taxpayer's owned shares (investment shares) are issued by a foreign company, which makes such shares properties situated in a foreign country, and therefore, procedures for disposition of arrears, such as seizure under the National Tax Collection Act are thwarted.

17. New Requirement for Retention of Transfer Pricing Documents in a Domestic Place (Paragraph 1 Article 85-3 of NTBL)

Transfer pricing documentations that the tax authority may request the taxpayer to submit should be retained in a domestic place, more specifically at the place of tax payment or at a place designated by the Commissioner of the National Tax Service. The covered documents would include an organizational chart, work allocation table, copies involving asset sale and purchase agreements and others specified in Article 16(4) of the ITCL and Article 38(1) of the ITCL-PD. Any companies subject to Korean transfer pricing regulation should pay attention to this new requirement.

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.

For more information pertaining to this newsletter, please contact the attorneys identified on the left.

The Lee & Ko newsletter is provided as a service and promotion for general information purposes. It does not contain legal advice. Although we try to provide quality information, we do not guarantee any results and Lee & Ko is not liable for any damages from the use of the information contained in the newsletter. We reserve all copyrights on text or images in the newsletter. The text or images in the newsletter may not be copied or distributed without the prior permission of Lee & Ko. If you no longer wish to receive our newsletter, please click here or reply to this email with UNSUBSCRIBE in the subject line.

More L&K Newsletters