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NEWSLETTER

TAX Group

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Korea Adopts a Statutory Attorney-Client Privilege Framework, Implications for Tax Audits

Overview of the Legislative Reform

On 29 January 2026, the Korean National Assembly passed amendments to the Attorney-at-Law Act that formally recognize attorney-client privilege, or ACP, as a statutory right. The reform grants attorneys and clients the right to withhold confidential legal communications, and certain related materials, from disclosure to third parties. The new regime is expected to have meaningful implications for tax audits, investigations, and administrative and judicial appeals, particularly by strengthening resistance to overly broad collection efforts and limiting downstream reliance on privileged materials.

The amendment was promulgated on 19 February 2026 and is scheduled to take effect one year after promulgation. The addendum also suggests that the new ACP provision can apply to communications or materials created prior to the effective date, raising the possibility of its retroactive application.

1. Prior Legal Landscape

Historically, Korean law imposed on attorneys a duty of confidentiality concerning client communications. That duty, however, did not operate as a procedural shield in the way privilege does in many jurisdictions. While attorneys argued that legal advice should be immune from seizure under the constitutional right to counsel, the lack of a formal statute meant that the protection was inconsistent and determined only on a case-by-case basis. Consequently, taxpayers effectively had no legal grounds to refuse document disclosure during tax audits, and

confidential communications were routinely seized in enforcement actions.

This legal landscape began to shift as the judiciary recognized the constitutional necessity of protecting attorney-client communications. Notably, Lee & Ko secured the first Supreme Court decision (Supreme Court Decision 2024-Mo-730, dated February 20, 2026) recognizing the illegality of seizing legal advice and communications between an attorney and a client. The lower court's ruling in this case (Seoul Southern District Court Decision 2023-Bo-4, dated February 23, 2024) was incorporated into the "Statement of Reasons" for the newly passed amendment, serving as a significant judicial catalyst for the legislative reform.

The newly enacted law addresses this previous gap by transforming from an ethical confidential obligation framework to an enforceable right against third-party disclosure.

2. Key provisions and Our Interpretation

The amended law adds a new Article 26-2 following the existing confidentiality provision in Article 26. The new article grants attorneys and their clients, including prospective clients, two core rights:

- 1) **A non-disclosure right over attorney-client communications** exchanged for purposes of providing or receiving legal services, and
- 2) **A non-disclosure right over documents and materials** (including electronic records) prepared in connection with litigation, investigations (audits), or other inquiries relating to matters for which counsel was engaged.

Unlike the work-product doctrine recognized in other jurisdictions in the context of discovery, which extends not only to attorneys but also to documents or materials prepared in anticipation of litigation by other representatives or advisors, the newly enacted ACP law in Korea limits this protection to documents or materials prepared by attorneys. In this respect, the newly enacted ACP provision may be viewed as placing particular emphasis on protecting the client's right to receive legal assistance from counsel.

3. Exceptions to the ACP

The statute provides that ACP will be waived or not apply in certain circumstances, including:

- where the client expressly consents,
- where substantial public interest concerns override confidentiality (for example, if legal advice is used to facilitate unlawful conduct, or counsel is involved in illegal activity),
- where disclosure is necessary for counsel to assert or defend rights in a dispute with the client, or
- where another statute expressly provides otherwise.

4. Implications for Tax Audits and Appeals in Korea

The codification of ACP is poised to materially affect Korean tax enforcement practice.

Historically, during tax audits and dawn raids in Korea, authorities routinely collected emails, internal memoranda, and external legal opinions without meaningful limitation. These materials were frequently incorporated into assessment notices and later relied upon in administrative and judicial proceedings.

In practice, Korean tax authorities conducting special tax audits have also exercised the power to temporarily seize books and records from the taxpayer's premises. Although such temporary seizure (so-called "deposit" or provisional custody of documents) formally requires the taxpayer's consent under Korean tax audit procedures, refusal in practice often results in a markedly more adversarial and pressured audit environment. As a result, taxpayers frequently feel compelled to provide consent, effectively under practical duress, for lack of a viable alternative. In this environment, tax authorities have historically obtained broad access to documentary materials, including internal communications and legal analyses.

Under the new regime, however, taxpayers may be positioned to assert privilege objections against the seizure or compelled production of protected materials. Under circumstances where tax authorities seek access to legal communications during on-site inspections or document seizures, the codification of ACP may therefore serve as an important procedural safeguard for taxpayers' rights, particularly in the context of intrusive special audits.

Although the Korean statutory framework does not yet provide explicit procedural mechanisms comparable to those developed in other jurisdictions, the amended law may function in a manner broadly analogous to privilege logs and claw-back procedures in U.S. discovery, allowing taxpayers to identify and withhold privileged materials or to seek the return of privileged documents that were inadvertently obtained by the authorities.

5. Unanswered Questions

Despite its structural significance, the amended law leaves several operational issues unresolved.

The statute does not provide detailed guidance regarding the scope of protected materials, the procedural mechanisms for asserting ACP during audits or investigations, or the remedies available in the event of a violation. In particular, it remains unclear what formal steps taxpayers and counsel must take to ensure that documents are recognized and treated as privileged.

For example, the amended law does not specify:

- whether documents must be expressly labeled or marked as “privileged” or “confidential” to qualify for protection;
- whether a privilege log or similar disclosure protocol will be required when resisting production;
- whether authorities must segregate or seal potentially privileged materials during searches or electronic data imaging; and
- whether an independent review mechanism, such as judicial or in camera inspection, will be available to resolve privilege disputes before enforcement measures are imposed.

From a more practical perspective, during a tax audit in Korea, authorities typically mass-collect virtually all text-based documents—such as emails and memoranda—based on file extensions. That is, rather than assessing the relevance of individual files before copying, they systematically collect all files matching certain extensions (e.g., .doc, .pdf, or .xls) regardless of content. This blanket data collection approach raises a significant practical challenge: how to prevent documents protected under ACP from being collected in the first place.

At present, as detailed implementing regulations or guidelines have not yet been released, it would be advisable to (i) clearly indicate

on communications with attorneys and documents prepared by attorneys that they are protected under ACP, for example by marking them with the phrase “Protected by Attorney-Client Privilege,” (ii) manage such materials separately from other documents so that, in the event of a tax audit, it can be clearly asserted that they should not be copied or collected, and (iii) ensure that legal counsel is present during the tax audit to prevent officials from photocopying or otherwise collecting such materials.

Accordingly, practitioners and taxpayers should expect further legislative refinement and judicial interpretation to clarify the privilege’s practical boundaries.

6. Concluding Assessment

The statutory recognition of ACP marks a significant evolution in Korean procedural law. By affording enforceable protection to confidential legal communications and litigation-related materials, the newly enacted law strengthens taxpayers’ defense rights and enhances procedural fairness in investigative and judicial contexts.

Functionally, the reform aligns Korea more closely with common law jurisdictions, particularly the United States, where ACP and the work-product doctrine form the backbone of adversarial litigation strategy.

The ultimate scope and strength of the Korean ACP regime, however, will depend on how courts interpret its boundaries and how enforcement authorities adapt their investigative practices in response.

The Tax Group at Lee & Ko possesses extensive experience and expertise in both domestic and international tax matters. Please feel free to contact us should you require assistance with any tax-related matters, including those discussed in this newsletter.

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