



Korean regulatory updates

Q3 2021

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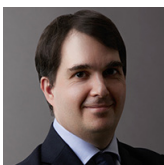
Executive summary

Editorial

The proposed tax reform for 2021 includes several items that are significant for foreign-invested companies: reporting requirements for liaison office, extension by 2 years of the “flat” rate scheme for foreign workers, clarifications around transfer pricing method during this Covid-19 situation...

Other topics covered by our letter are more of a technical nature, covering payroll (such as the newly required information on payslips) and some audit requirements.

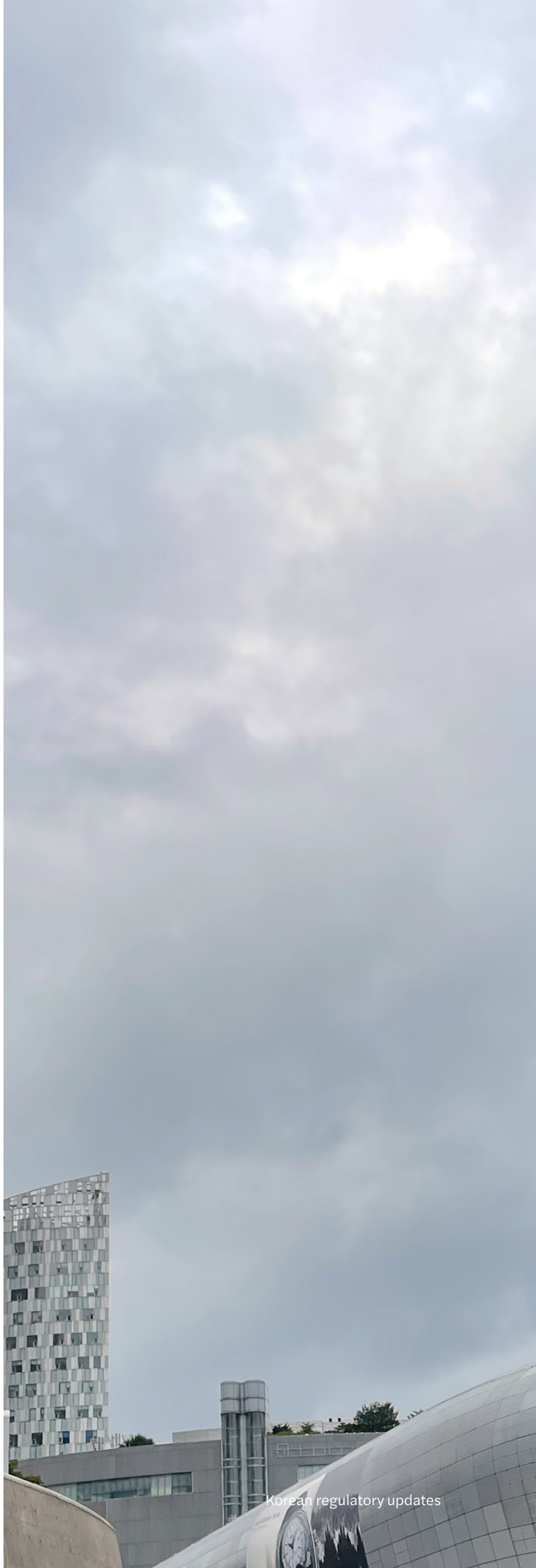
We hope you enjoy reading this regulatory update.



Julien Herveau
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Tax updates

International tax

Establishment of grounds for including loss-making companies when selecting comparable entities

As one of the considerations when applying the arm's length Transfer Pricing method, a new clause has been added that allows companies that have suffered losses due to economic conditions, such as economic downturn, to be also selected as comparable entities.

Applicable to tax base determined/reassessed by tax authorities on or after January 1, 2022 (pending approval by National Assembly).

Consideration of force majeure reasons when determining or reassessing cost sharing agreements

For more rational application of the transfer pricing taxation under special circumstances such as COVID-19, an exception is recognized when costs for the development of intangible assets are not shared as agreed between related parties, due to force majeure.

Applicable to tax base determined/reassessed by tax authorities on or after January 1, 2022 (pending approval by National Assembly).

Reduction of penalties for negligence when submitting international transaction data after the deadline

Reduction of penalties by 30-90% when submitting international transaction data after the deadline (6 months after year-end).

Applicable to data submitted after the Decree enters into force. The date of its promulgation will be announced by the tax authorities.

Tightening of controls on tax evasion through controlled foreign corporations (CFCs)

According to the existing International Tax Coordination Act, if a specific foreign corporation is located in a low tax jurisdiction, the amount to be attributed to a Korean out of the retained income that can be distributed as of the end of each business year of the corporation is taxed as it is deemed to have been received by the Korean residents as dividend.

Under the proposal, threshold would be raised from 15% to the level of 70% of the top marginal corporate income tax rate (25% at present).

Applicable to taxable years commencing on or after January 1, 2022 (pending approval by National Assembly).

Tax updates

Corporate income tax

New obligation to submit data on the status of liaison offices of foreign corporations

Information of foreign corporation liaison offices (e.g. status of the foreign head office and other branches in Korea, status of domestic customers) shall be submitted by February 10th of the year following the relevant taxable year. The objective for tax office is to identify any permanent establishment.

Applicable to taxable years commencing on or after January 1, 2022 (pending approval by National Assembly).

Application of loss carry forward deduction for business acquisition

According to the existing Corporate Income Tax Act, loss carried forward of an acquired corporation could be used for income generated from the acquired business at the time of business acquisition.

However, loss carried forward of the acquiring corporation should only be deducted from the income amount accrued from the existing business of the acquiring corporation: this would apply in cases when 70% of assets and 90% or more of net assets are transferred in a transaction between related parties.

In this case, the acquiring corporation shall maintain separate accounting for the existing business and the acquired business separately, and deduct the loss carried forward from the existing business.

Applicable to business transfers made on or after January 1, 2022 (pending approval by National Assembly).

New penalty tax for non-submission of cost statements and relevant documentation related to business vehicles

Applicable from the tax year beginning on or after January 1, 2022 (pending approval by National Assembly).



Tax updates

VAT

New documentation obligations for foreign companies that supply electronic services

New regulations obligate foreign business operators supplying electronic services to domestic consumers to keep transaction details for 5 years.

If the tax authority requests the submission of the relevant documentation, the business operator must submit it within 60 days.

Applicable to services provided on or after July 1, 2022 (pending approval by National Assembly).



Tax updates

Individual income tax

Extension of the “flat” rate taxation for foreign workers

The special taxation exemption for foreign workers, where they can choose to use a single tax rate (20.9%, including local income tax) for 5 years, has been extended by 2 years from December 31, 2021 to December 31, 2023 (pending approval by National Assembly).

Extension of the income tax reduction for foreign technicians

Income tax reduction for foreign engineers, which provides 50% to 70% reduction in income tax on salaries of specified foreign engineers for 5 years (except when applying the flat rate) will be extended for 2 years, i.e. until December 31, 2023 (pending approval by National Assembly).

Tax credit limit for taxpayers' associations

The tax credit granted to member of taxpayers' associations, who receive salaries from foreign residents and have their tax withheld by the association, are calculated as 5% of the income tax of the relevant individual.

Under the amendment, the credit would be limited to 1 million won per member per year.

Applicable to income earned on or after January 1, 2022 (pending approval by National Assembly).

Clarification on withholding requirements for foreign expatriates

A domestic corporation which meets certain requirements must withhold 20.9% of the amount (including local income tax) as personal tax when paying foreign corporation for the service provided by expatriates in Korea.

The amendment clarifies that this applies when the sum of the contractual labor remuneration with the foreign corporation, or the actual labor remuneration in the immediately preceding year exceeds 2 billion per year.

Applicable to payments made by domestic companies with expatriates to foreign companies on or after January 1, 2022 (pending approval by National Assembly).

Tax updates

Restriction of special taxation act

Strengthening tax support for national strategic technology R&D and facility investment

The current two-tier structure of the R&D current support system (R&D tax credit and facility investment tax credit) is reorganized to a three-tier structure, with the introduction of a new categories for national strategic industrial technologies (semi-conductor, battery and vaccine industries). Higher tax credit rates would apply for this new category.

The proposed tax credits for national strategic industrial technologies will apply to qualifying R&D expenditure incurred and facility investments made between July 1, 2021 and December 31, 2024 (pending approval by National Assembly).

Expansion of technologies subject to tax credit for new growth source technology R&D expenses

R&D expenses of new growth source technology have been expanded by adding new industrial technologies such as carbon-neutral technology and biotechnology to the technology subject to tax credit. The function of the review committee was also expanded to assess whether new technology is introduced and whether the current technology is preserved. To expand future growth engines, the application period for tax credit on R&D expenses of new growth source technology has been extended by 3 years, from December 31, 2021 to December 31, 2024.

The proposed changes will apply for fiscal years beginning on or after January 1, 2022 (pending approval by National Assembly).

Temporary increase of the amount of the employment increase tax credit deduction and extended application deadline

In order to alleviate the polarization of employment by class and region due to COVID-19, an additional deduction of 1 million won will be deducted when employing of vulnerable groups (such as youth and disabled people) in companies, outside the metropolitan area increases.

The amended regulations will temporarily apply to the increase in employment from 2021 to 2022. To support job creation, the application period for the employment increase tax credit system has been extended by three years, from December 31, 2021 to December 31, 2024.

Applicable to the increase in full-time workers in the tax year to which December 31, 2021 and December 31, 2022 belong (pending approval by National Assembly).

Enhancing the effectiveness of social insurance premium tax credits for small and medium-sized enterprises and extending the application period

According to the current regulations, if the number of full-time workers decreases during the deduction period, deduction is excluded for the remaining period. However, the follow-up management regulations have been strengthened by adding a regulation requiring payment of deductible tax when the number of full-time workers decreases.

The application deadline for the small and medium-sized business (SMEs) social insurance premium tax credit system will be extended by three years, from December 31, 2021 to December 31, 2024.

Applicable to cases where the number of full-time workers increases in the tax year beginning on or after January 1, 2022 (pending approval by National Assembly).

Temporary extension of the carryback period of tax losses for SMEs

Currently, any SME incurring tax losses in a tax year may choose to carry back the losses for the year immediately preceding the tax year in which the tax losses incurred. It can claim a refund of the corporate income taxes paid in the preceding year, based on the tax losses carried back. The proposal extends the carry-back period of tax losses from one year to two years for SMEs, on a temporary basis.

Only apply to the tax year including December 31, 2021 (pending approval by National Assembly).

Extension of application period for income tax reduction for small and medium-sized enterprises (SMEs) employees

The application period of the 70% (90% for youth) tax reduction of personal income tax for 3 years (5 years for youth) for certain small and medium-sized enterprises (SMEs) employees will be extended from December 31, 2021 to December 31, 2023 by 2 years (pending approval by National Assembly).



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Audit updates

Announce of amendment

Amendment of the External Audit Act Enforcement Decree

Due to restrictions on overseas business trips linked to COVID-19, many companies have difficulties in implementing consolidated internal control reporting.

In order to adjust the execution period for audit on the consolidated internal control over financial reporting and to reorganize other laws related to accounting supervision, the amendment of

the 'External Audit Act Enforcement Decree' has been announced.

In consideration of the time required to implement the consolidated internal control over financial reporting and management difficulties due to COVID-19, the implementation period is postponed by one year.

This is only applicable to listed companies in Korea and the relevant thresholds are as below.

| Total assets | Audit (before) | Audit (after) |
|-----------------------|----------------|---------------|
| Above KRW 2 trillion | From 2022 | From 2023 |
| Above KRW 500 billion | From 2023 | From 2024 |
| Above KRW 100 billion | From 2024 | From 2025 |

*If any entities want to implement the consolidated internal control over financial reporting on the schedule set before, it can be allowed.

HR & payroll

Labour updates

Implementation of employment insurance for workers with special types of employment

- From July 1, 2021, workers with special types of employment, as described below, can also sign up for unemployment insurance.
- As the coverage of employment insurance has been expanded to 12 categories of workers in special employment types, these workers are also able to receive job-seeking benefits and maternity benefits.

*New occupations covered from July 1: insurance planner, credit card planner, loan planner, visiting teacher, visiting teacher using educational teaching aid, courier, rental product visiting inspector, home appliance delivery/installer, door-to-door salesperson, freight owner, construction machine operator, after-school tutor

| Coverage | | |
|------------------------------|--|--|
| Eligibility | 12 categories of workers in special employment types | |
| Exclusion from application | <ul style="list-style-type: none"> - Persons with an average monthly income of less than 800,000 won under a labor contract (can be combined from Jan 2022) - 65 years of age or older (applicable to those who are registered to employment insurance before the age of 65) | |
| Levy of insurance | | |
| Insurance premium rate | Unemployment benefit 1.4% (worker 0.7%, employer 0.7%) | |
| Requirements | Contribution | Insured unit period of 12 months or more out of the 24 months before loss of employment |
| | Reason for retirement | Involuntary unemployment (including unemployment due to a income decrease more than a certain level prescribed by Presidential Decree) |
| Job-seeking benefits | | |
| Benefit level | 60% of the basic daily amount calculated based on the total amount of remuneration for the 12 months before retirement | |
| Benefit duration | 120 to 270 days | |
| Recognition of income | When income is generated during the receiving period, job-seeking benefits are paid up to the level of the income reduced | |
| Maternity (leave) allowances | | |
| Contribution | Insured unit period of 3 months or more before the date of childbirth (miscarriage, stillbirth) | |
| Allowance level | 100% of the average monthly remuneration for the year preceding the date of childbirth | |
| Allowance duration | 90 days in general cases | |

HR & payroll

Labour updates

Extended application of the 52-hour workweek system to business with 5 or more workers from July 1, 2021

From July 1, 2021, the maximum 52 working hours per week applies to workplaces with 5 to 49 employees from July 1, 2021. For workplaces with more than 49 employees, the maximum working hours of 52 hours per week was already implemented.

Guaranteed maternity leave allowances for fixed-term and dispatched workers

- From July 1, 2021, maternity leave allowances are guaranteed to fixed-term and dispatched workers whose employment contract expires during maternity leave.

*Maternity leave allowances equivalent: 100% of ordinary wages (under some conditions) for the remaining maternity leave from the expiration of the labor contract to the end of the maternity leave.

Special overtime work due to delayed entry of foreign workers

If the workplace workload increases due to delayed entry of foreign workers in second-half of 2021, special overtime work is available for workplaces with 30-49 workers, upon labor office approval.

* 8 hours of special overtime work is available for the workplaces with 5-29 workers, upon the agreement of labor representatives (applicable until the end of 2022).

- This is in consideration of the fact that it may be a “special circumstance” if a company that relies on foreign workers cannot supply foreign workers while the 52-hour workweek system is applied from July.
- This measure will be operated temporarily in the second half of this year and may be terminated early if the delay in entry of foreign workers is resolved.
- The company can apply for special overtime work authorization with the employment permit at the local labor office after meeting the requirements such as the consent of the worker.
- Companies must implement health protection measures in accordance with the Ministry of Employment and Labor Notice (Enforcement on April 6) for workers who work special overtime.



HR & payroll

Labour updates

Mandatory issuance of payslips when paying wages (Enforcement: November 19, 2021)

1) Starting from November 19, 2021, the employer must issue payslip when paying wages to workers.

2) The items that must be included in the payslip are as below:

- Name
- The information that can identify the employee, such as date of birth, and employee number
- Payment date
- Number of worked days
- Total wage
- Total number of hours worked
- In the case of overtime work, night work or holiday work, the number of hours
- Amount for each other item such as basic salary, allowances, bonuses, and performance pay
- Matters necessary for calculating the total wage, such as the calculation method for each item of wage
- Amount for each deduction item and total amount

3) Payslips can be issued in writing or through electronic documents in accordance with the Electronic Documents Act.

) Penalties:

| Violation | Penalty (Thousand KRW) | | |
|---|------------------------|-------|-------------------|
| | Once | Twice | More than 3 times |
| If the payslip is not issued | 300 | 500 | 1,000 |
| If the payslips is issued with some missing/ inaccurate information | 200 | 300 | 500 |

Scope of relatives of employers subject to workplace harassment sanctions (Enforcement: October 14, 2021)

- In accordance with the revision of the Labor Standards Act, from October 14, a fine of not more than 10 million won will be imposed on employers who commit workplace harassment.
- The relatives of the employer as defined below are also included as subjects of sanctions equivalent to the employer.
- Accordingly, the scope of relatives of employers subject to fines for workplace harassment is stipulated as follows.

(1) Spouse of the employer

(2) Blood relatives within the fourth degree

(3) Relatives within the fourth degree

Key figures

Tax rate & social insurance

Individual tax rate

| Aggregate income taxation standard | Tax rate (from 2019 ¹) |
|---|------------------------------------|
| Below KRW 12 million | 6.6% |
| KRW 12 million ~ below KRW 46 million | 16.5% |
| KRW 46 million ~ below KRW 88 million | 26.4% |
| KRW 88 million ~ below KRW 150 million | 38.5% |
| KRW 150 million ~ below KRW 300 million | 41.8% |
| KRW 300 million ~ below KRW 500 million | 44% |
| KRW 500 million and below KRW 1 billion | 46.2 % |
| Above KRW 1 billion | 49.5% |

Corporate tax rate

| Taxable income | Applicable rate |
|---|-----------------|
| Amount below KRW 200 million | 11% |
| Amount exceeding KRW 200 million and below KRW 20 billion | 22% |
| Amount exceeding KRW 20 billion and below KRW 300 billion | 24.2% |
| Amount exceeding KRW 300 billion | 27.5% |

Social insurance in the Republic of Korea

| Social insurance | Employer portion | Employee portion |
|--|--|---------------------------------------|
| Health insurance | Monthly average wage X 3.43% X 1.1152 | Monthly average wage X 3.43% X 1.1152 |
| National pension | Monthly average wage X 4.5% | Monthly average wage X 4.5% |
| Employment Insurance | Wage X (0.8% + premium by business size) | Wage X 0.8% |
| Industrial accident compensation insurance | Wage X premium by business type (0.7%~34%) | |
| Total | About 10% of wage | About 9% of wage |

Premium rate introduced in this table may vary depending on the situation. Besides, upper limitation is set for some contributions.

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