삼정 KPMG

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Korean Tax Brief

Update on Current Issues and Trends

1. Tax News

The Ministry of Strategy and Finance ("MOSF"), amends the Tax Treaty Administrative Regulations for Regular Exchange of Financial Account Information

In conformity with the Multilateral Competent Authority Agreement initially signed in October 2014, the tax authority will provide 60 countries with their residents' financial account information in South Korea by the end of September 2018 in exchange for financial account information of Korean residents which foreign financial institutions retain in 78 countries. For the purpose of the information exchange, the MOSF has amended relevant guidelines, the Tax Treaty Administrative Regulations for Regular Exchange of Financial Account Information, in order to adjust the scope of jurisdictions for which the financial institutions should collect information and to improve insufficiency in administrative regulations, including reporting and due diligence procedures.

The National Tax Service ("NTS"), takes strict and fully compliant measures against offshore tax evasions with hidden income and asset overseas

The NTS has started tax investigations concurrently on 39 taxpayers who are suspected with offshore tax evasions, and informed their plans to take strict and fully compliant measures to deal with tax dodgers including accusation of criminal charges, as well as assessment of unpaid taxes, especially if an intentional evasion of tax is confirmed as the result of tax audit. As a comparison, in the last year, the NTS conducted tax investigations on 233 taxpayers for tax evasion charges, and converted 10 audits into criminal tax investigations; filed criminal charges on 6 taxpayers as the result. The NTS collected a total of 1.3 trillion won from the tax investigations.

2. Recent Regulations and Precedents

Whether the expenses related to product presentation events for more-than-one participating organizations should be treated as entertainment expense (Tax Tribunal 2016Seo2538, 2018. 5. 15.)

The Tax Tribunal concluded that it is inappropriate that tax authority rejected on the petitioner's amended tax return claim with a reason to treat the expenses related to product presentation events for more-than-one participating organizations as entertainment expenses defined under Article 25 of the Corporate Income Tax Law, considering the following reasons;

- Presentation events for more-than-one participating organizations are different from those for sole participating organization in that invitations were delivered in advance to medical professionals and only interested ones participated in the events,
- The events were conducted duly in accordance with the Fair Competition Agreement which requires in-advance reporting and other compliances, and,
- It is difficult to look the purpose as to strengthen friendly relationships and smoothen transactions with counterparties.

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Whether capital gain and loss on domestic derivatives can be offset against capital gain and loss on foreign derivatives (Tax Tribunal 2017Gwang5135, 2018. 5. 03.)

Although the taxpayer urges that gain and loss on foreign derivatives are only virtual and unrealized and thus capital gains tax thereon is unreasonable, the Tax Tribunal concluded that it is difficult to accept the argument with the following reasons;

- There would be no other way to calculate foreign derivatives capital gain but to use the spread on the foreign derivative account provided that differences between the acquisition prices recorded on the foreign derivative account in foreign market (EUREX) and the closing prices in domestic market (KOSPI200) were settled daily, and,

- Furthermore, the petitioner's capital gains and losses from domestic and foreign derivatives should be calculated separately because the amendment made in 2018. 2. 13. with Article 159-2 and 178-2 of the Enforcement Decree of the Individual Income Tax Law, which allowed deduction against each other, is eligible only to the transactions subject to be reported under the income tax filing of the business year 2017 or after, which is not the case for the petitioner.

Whether a domestic financial investment company is subject to proxy payment for Value Added Tax ("VAT"), if the company receives offshore consulting services by a foreign company without a domestic place of business, for the purpose of sales and purchases of foreign debentures in the foreign markets (Seomyun-2018-VAT Law Interpretation-0482, 2018. 4. 30.)

Article 52 of the VAT Law in regards to VAT proxy payment, is not applicable to the company if a domestic financial investment company which operates under the Financial Investment Services and Capital Markets Law, receives consulting services (designing and determining the overall elements such as the buyer, seller, timing and pricing of debentures) from a foreign company without a domestic place of business, in return for service fee, part of capital gains thereon.

Whether it is eligible for indirect foreign tax credit in a case where corporate tax was imposed on source (earnings for accounting purpose) of dividend at the subsidiary level in China subsequent to the timing of dividend payment (Tax Tribunal 2017Seo0413, 2018. 5. 15)

There is no reasonable ground to decline the amended tax return with indirect foreign tax credit based on the following aspects;

- Considering that the purpose of indirect foreign credit is to do with avoiding double taxation, there is no reason to treat differently "foreign corporate tax after dividend" from "dividend after foreign tax,

- Considering that there is no provision or clause to demand which one should be the first between the timing of dividend payments and that of corporate tax payment, it is more important to focus on the matching between the two, and,

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- There is no point to interpret differently evaluation gain on such share investment from other cases with timing issues, such as, accelerated depreciation and in-advance depreciation.

Whether the corporate taxpayer could claim foreign tax credit in the calculation of local tax by applying Article 97 of the Local Tax Incentives and Limitations Law ("LTILL"), which is applicable to individual taxpayers (The Board of Audit and Inspection of Korea 2016-835, 2018. 5. 24)

The petitioner's claim on foreign tax credit is inappropriate considering the followings;

- The provisions for foreign tax credits under Article 57 of the Individual Income Tax Law and Article 57 of the Corporate Income Tax Law which are specified for the purpose of anti-double taxation under tax treaties do not regulate provisions against general principles of tax treaties and benefits thereon,

- Whilst there is a clause under the LTILL which allows foreign tax credit on calculation of individual local income tax, the LITILL does not have any written clause which allows foreign tax credit to the calculation of local income tax on corporations, and,

- In the current circumstance where there is no written law applicable to corporate taxpayers, it would be irrelevant to apply Article 97 of the LTILL, the clause which allows foreign tax credit to individual taxpayers, in the calculation of foreign tax credit and the limit upon the corporate taxpayer.

Whether the highest shareholding of the recent five years held by the shareholder who newly became the oligopolistic shareholder by the amendment of relevant laws should include the portion owned by entities, who are newly treated as related parties under the amended law (The Board of Audit and Inspection of Korea 2016-73, 2018. 5. 28)

The petitioner's claim on deemed acquisition tax refund based on the highest shareholding of the recent five years held by the oligopolistic shareholder, including the portion owned by its related parties, cannot be accepted considering that;

- The related parties in question achieved the status as oligopolistic shareholder due to the Presidential Decree No. 24295 (effective from 2013. 1. 1.), which amended the range of related parties to be considered inclusive of the oligopolistic shareholding under the Framework Law on Local Taxes,

- All shares should be viewed purchased on the date when the new shares were purchased after the 2013. 1. 1., rather than the actual acquisition dates, and,

- The oligopolistic shareholder was not in the oligopolistic status under the previous law provisions.

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