

Proposed Amendments to the Enforcement Decree following the 2024 Korean Tax Law Amendment

The Ministry of Economy and Finance (“MOEF”) announced the amendments to the Enforcement Decree to implement the tax provisions delegated by the 2024 Korean Tax Law Amendment passed by the National Assembly in December 2024. The public consultation period for the proposed amendments to the Enforcement Decree ended on February 5, 2025. The amendments to the Enforcement Decree will be officially promulgated and implemented shortly after completion of final legislative procedures, including the Cabinet meeting.

In this newsletter, we summarize the major contents of the proposed amendments to the Enforcement Decree.

I. Corporate Income Tax Law

Scope of Documents Submitted for Tax Exemption/Non-taxation Applications under Tax Treaties

Under Article 138-4 of the current Enforcement Decree of the Corporate Income Tax Law, (“CITL”), when a beneficial owner of Korean source income submits the application for tax exemption/non-taxation under the applicable tax treaty, “Independent Auditors’ Report” is required as one of the evidential documents to support the beneficial ownership, when the tax exemption amount exceeds KRW 1 billion. Under the proposed amendment, the scope of acceptable evidential documents has been expanded. In addition to Independent Auditors’ Report, taxpayers may now submit tax returns, financial statements, and supplementary schedules as evidential document.

Additionally, the amendment stipulates that documents should be submitted in Korean by default, however, documents in English may also be accepted if approved by the National Tax Service (NTS).

- [Effective Date] This amendment will apply to applications submitted on or after the effective date of the amendments.

Simplification of Tax Exemption Applications and Withholding Procedures for Overseas Investment Vehicles on Income from Korean Government Bonds and Monetary Stabilization Bonds

Under the current CITL, when investing in Korean Government Bonds or Monetary Stabilization Bonds, a non-resident or a foreign corporation who makes investment through an overseas investment vehicle (“OIV”) is required to separately apply the tax exemption on the interest income or capital gains for the respective investor, unless the OIV is a publicly listed OIV which can claim the tax treaty benefits as a beneficial owner of the Korean source income.

The recent amendments to the Tax Law and Enforcement Decree aim to simplify the application process to claim the tax exemption on the interest income or capital gains earned from Korean Government Bonds or Monetary Stabilization Bonds for an OIV. Under the revised tax provision, the OIV itself will be regarded as the beneficial owner, like a publicly listed OIV. Accordingly, the OIV may submit a tax exemption application directly to the income payer or to the Qualified Foreign Institution (“QFI”) in the case of investments made through QFI. The QFI, in turn, will submit its own tax exemption application to the relevant tax office through the income payer.

Additionally, under the amended Enforcement Decree, the requirement for income payers to submit monthly reports to the tax office has been revised and such reports will now only need to be submitted upon request by the tax office.

- [Effective Date] This amendment will apply to income received on or after the effective date of the amended Enforcement Decree.

Introduction of Tax Refund Claim Procedure for Non-Residents and Foreign Corporations on Income from Korean Government Bonds and Monetary Stabilization Bonds

Under the current CITL, non-residents and foreign corporations investing in Korean government bonds or Monetary Stabilization Bonds are not permitted to directly file an amended tax filing to claim the tax refund for the taxes paid on interest income or capital gains earned from the Korean government bonds or Monetary Stabilization Bonds. Instead, refunds could only be processed through the withholding agent. With the recent Tax Law amendment and Enforcement Decree amendments, non-residents, foreign corporations, OIVs, and QFIs will now be allowed to directly file a tax refund claim.

- Filing Deadline: Within five years from the 11th of the month following the month in which the withholding is made
- Required Documents: Refund claim form, tax exemption application, certificate of tax residence, etc.
- Filing Procedure: The refund claim procedure will follow the existing refund claim process for tax exemption and reduced tax rate applicable to non-residents and foreign corporations
- [Effective Date] This amendment will apply to tax refund claims filed on or after January 1, 2025.

Establishment of Regulation regarding Corporate Tax Treatment of Taxable Income and Deductible Expenses for Employee Discount Sales

Under the current CITL, there were no specific tax regulations regarding the tax treatment when a corporation sells goods or services to its employees at a price lower than the fair market value.

The 2024 Korean Tax Amendment stipulates that the discount amount, which is the difference between the fair market value and the actual sales price, must be included in taxable income for corporate tax purposes. At the same time, the same discount amount will be recognized as a deductible expense, classified under personnel expenses.

Furthermore, if an affiliate company produces or supplies goods or services that are sold at a discount to the corporation's employees, and the corporation reimburses the affiliate company for the discount amount, such reimbursements will also be treated as deductible personnel expenses for corporate income tax purposes.

- [Effective Date] This amendment will apply to goods and services sold or provided on or after January 1, 2025.

II. Individual Income Tax Law

Establishment of a Non-Taxable Limit for Employee Discount Sales

Under the current Individual Income Tax Law, there were no explicit tax provisions regarding the treatment of income tax on the discount amount when a corporation supplies goods or services to its employees or affiliated company's employees at a price lower than the price offered to general consumers.

The revised tax law stipulates that if a corporation, including its affiliated companies (as defined under the Monopoly Regulation and Fair Trade Act), provides employees with goods or services at a price lower than the fair market value, such discount amount will be classified as taxable employment income. This applies to the following cases:

1. When a corporation sells or provides goods or services it produces or supplies to its employees at a price lower than the fair market value.
2. When a corporation provides financial support to its executives or employees for the purchase or use of goods or services.
3. When a corporation provides financial support to its employees for the purchase or use of goods or services supplied by its affiliated companies.
4. When an affiliated company sells or provides goods or services it produces or supplies to the

corporation's employees at a price lower than the fair market value, and the corporation reimburses the affiliated company for the discount amount received by the employee.

The fair market value ("FMV") will generally be determined based on Article 52 of the CITL. However, in certain cases as listed below, actual prices paid by the employees will be recognized as the FMV:

1. If the goods are damaged or perishable, making them unsellable to customers outside the company
2. If the goods or services, such as airline tickets or hotel vouchers, have an imminent expiration date, making their sale to non-employees significantly difficult

Additionally, the amendment introduces non-taxable limits for employee discounts, provided that specific conditions are met. Employee discounts will be treated as non-taxable income if the following criteria are satisfied:

- A. Non-taxable limit: Max (20% of the FMV, KRW 2.4 million per year)
- B. Non-taxable conditions:
 - ① The employee must purchase the goods or services for personal consumption
 - ② The employee must not resell the goods or services within a specified period (1 or 2 years, depending on the product type)
 - ③ The discount must be applied consistently based predetermined internal policy applicable to all employees

➤ [Effective Date] This amendment will apply to income earned on or after January 1, 2025.

Refinement of Determination of Residency Criteria

Under the current Enforcement Decree of the Individual Income Tax Law, a non-resident individual is classified as a resident if they have a domicile in Korea or have stayed in Korea for at least 183 days within a single taxable year. Under the amendment to the Enforcement Decree, even if the period of residency in Korea during a single taxable year is less than 183 days, the non-resident individual may still be considered a resident if the total period of residency, including the immediately preceding taxable year, amounts to at least 183 consecutive days in Korea.

➤ [Effective Date] This amendment will take effect for tax years starting on or after January 1, 2026.

III. Tax Incentive Limitation Law

Expansion of Eligible Expenses for R&D Tax Credit

The Article 9 of the current Tax Incentive Limitation Law (“TILL”) limits the eligible expenses for the R&D tax credit in National Strategic Technologies and New Growth Engines or Source Technologies to outsourced or joint R&D expenses, supply costs, and labor costs, unlike the broader scope allowed for the general R&D tax credit.

According to the amendment to the Enforcement Decree, the scope of eligible expenses has been expanded to align with those of the general R&D tax credit. The eligible expenses now include software rental and purchase costs (excluding general-purpose office software), R&D facility lease costs, and cloud service usage fees. This expansion aims to enhance corporate support for research and development activities.

- [Effective Date] This amendment will apply to expenses incurred in the tax year that includes the effective date of the new Enforcement Decree.

Establishment of Grace Period for SMEs with R&D and Integrated Investment Tax Credits

A new grace period for a small and medium sized enterprise (“SME”) graduation has been introduced for SMEs applying the R&D tax credits related to the New Growth Engines or Source Technologies and National Strategic Technologies, as well as for the Integrated Investment tax credit. The details are as follows:

- ✓ If a company exceeded the SME size criteria before the fiscal year that includes December 31, 2023: 3-year grace period
 - ✓ If a company exceeds the SME size criteria in the fiscal year following the fiscal year that includes December 31, 2023: 5-year grace period (7-year grace period for SMEs listed on KOSPI or KOSDAQ)
 - ✓ If a company is classified as having graduated from SME status due to amendments to the Enforcement Decree of the Framework Act on Small and Medium Enterprises (*): 3-year grace period
- (*) It defines the SME criteria, such as revenue thresholds by industry and criterial for independence.

- [Effective Date] This amendment will apply to tax years that include the effective date of the Enforcement Decree.

Tax Credit for Acquiring Shares in Technology-Innovative SMEs

Under Article 114 of the current TILL, investors who acquire 50% or more (or 30% or more if acquiring management control) of shares in a technology-innovative SME are eligible for a tax credit equal to 5% of the technological value amount of the acquired company, which could be calculated using one of the following two methods:

- i) (Direct Method) The total assessed value of the patents and other intellectual properties as determined by an authorized technology evaluation agency
- ii) (Indirect Method) Purchase price - (Fair Value of the acquired company's Net Assets × 120%)

According to the amendment to the Enforcement Decree, the indirect method has been eliminated, allowing only the direct method for assessing the technological value amount.

Additionally, under the previous rule, if the controlling shareholder of the acquired company remained as an executive director after the fiscal year in which the eligibility criteria were met, the tax credit requirement was not considered fulfilled. However, according to the amendment, even if the controlling shareholder remains as an executive director, the tax credit can still be granted as long as their ownership stake is 20% or less.

- [Effective Date] This amendment will apply to shares acquired on or after the effective date of the Enforcement Decree.

IV. Value Added Tax Law

Special Provision for Issuing and Receiving VAT Invoices in Cases of Corporate Spin-Offs or Spin-Off Mergers

A new special provision has been introduced to allow a surviving corporation or a newly established corporation (*) in a corporate spin-off or spin-off merger to issue and receive VAT invoices when the dissolving corporation supplies or receives goods or services between the spin-off/merger date and the registration date of the spin-off/merger.

(*) It applies only if the surviving corporation or the newly established corporation succeeds to the rights and obligations related to the supply of goods or services

- [Effective Date] This amendment will apply to goods or services supplied on or after the effective date of the Enforcement Decree.

Expansion of Reporting Entities subject to Sales and Payment Agency Data

Under the current Value-Added Tax Law, entities that mediate sales or payment in connection with the supply of goods and services are required to electronically submit monthly transaction details (i.e., sales and payment agency data) to the National Tax Service by the 15th of the month following the end of each quarter.

Under the amendment to the Enforcement Decree, application market operators (*) will now also be included as entities subject to this reporting obligation, enhancing tax transparency.

(*) It refers to businesses that provide value-added telecommunications services under the Telecommunications Business Act, facilitating transactions by registering, selling, and enabling user purchases of mobile content.

- [Effective Date] This amendment will apply to transactions which mediate sales or payment conducted on or after July 1, 2025

V. National Tax Framework Law

Expansion of Documents Requested by Tax Authorities for Adjustments of Arm's Length Price

Under the current Enforcement Decree of the International Tax Coordination Law, the tax authorities may request organizational charts, work allocation statements, cross-shareholding details with related parties, and international transaction pricing data from the taxpayers when making adjustments to the arm's length price.

According to the amendment to the Enforcement Decree, tax authorities will now be able to additionally request segmented income statements and segmented balance sheets for each international transaction involving foreign related parties.

- [Effective Date] This amendment will apply to document requests made on or after the effective date of the Enforcement Decree.

Specification of Criteria on Penalties for Non-Compliance with International Transaction Data Submission Obligations

According to the amendment to the Enforcement Decree, the criteria for increasing or reducing penalties for failure to comply with international transaction data submission obligations are specifically defined as follows:

Category	Condition	Adjustment
Increase	Repeated violation for the same reason within the past 2 years	30%
	Third violation for the same reason within the past 3 years	50%
Decrease	Voluntary payment of the penalty before the deadline for submitting a defense statement	△20%
	Submission of transaction data within the deadline but with partial omissions or deficiencies	△50%

- [Effective Date] This amendment will apply to submissions made on or after the effective date of the Enforcement Decree

Specification of Criteria on Penalties for Non-Compliance with Submission Obligations of Overseas Subsidiaries and Related Parties

The amendment to the Enforcement Decree specifies the criteria for increasing or reducing penalties for failure to comply with submission obligations of overseas subsidiaries and related parties as follows:

Category	Condition	Adjustment
Increase	An entity required to submit or supplement data has violated the obligation at least twice within the last three tax periods	50%
	An entity required to submit or supplement data has violated reporting obligation for foreign exchange transaction under the Foreign Exchange Transactions Act.	50%
Decrease	An entity required to submit or supplement data submits the required documents within two months after the deadline.	△30%
	An entity required to submit or supplement data completes submission or supplementation within the deadline for filing a defense statement.	△30%

- [Effective Date] This amendment will apply to submissions made on or after the effective date of the Enforcement Decree

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