Korean Tax Reforms in the Midst of COVID-19

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As every sector and industry has had to adjust to the impact of COVID-19, tax reforms have been no exception. With over a year in which we have had to cope and adjust to the physical restrictions imposed on us by COVID-19, the concentration of tax reforms in Korea have been to provide tax relief, which we are able to see on both the local and international levels. Although the tax reliefs that we see play out immediately are at the local level for local businesses, there are tax relief measures that spread across to all taxpayers, which we wanted to highlight along with some other tax amendments applicable to Korean companies and foreigners doing business in Korea.

FIRST, we wanted to highlight some of the tax amendments that protect and promote taxpayers' rights.

- **Extension of tax carryforward periods for tax credits and net operating losses:**
  The carryforward periods have been extended from 5 to 7 years to 10 years. This provides more time for companies to utilize their tax credits. The carryforward periods have been extended from 10 to 15 years. This provides more time for companies to utilize their losses.
- **Change in base date from which interest accrues on refund request:**
  Previously, when the taxpayer filed for a refund, the interest accrued from the date the refund was filed. Under the tax amendment, the interest accrues from the date the taxes were paid.
- **Strengthen notification procedures for tax investigation:**
  The notification procedures were once strengthened in 2018, which expanded the list of notice items that the tax authorities needed to disclose. In addition to this expanded list, now for the prior notification for tax investigation, an additional notice item has been added, which is the tax year subject to audit. For the post notification for tax investigations, the tax authorities are now required to include specific information to explain the outcome, such as relevant tax laws, specific facts and circumstances for the determination of tax base and tax amount, as well as, the types, amounts, and basis of penalties to be imposed. The notice period remains unchanged which is 15 days prior to the investigation and 20 days after the tax investigation.

SECOND, the following amendments apply to cross-border transactions:

- **Extended roll-back period for bilateral and unilateral APAs:**
  The roll-back period for bilateral APAs have been extended from 5 years to 7 years and unilateral APAs have been extended from 3 years to 5 years. Essentially, the period in which the APAs are effective has been extended. As the cover period for an APA is 5 years, the total number of years that an APA is effective can be as long as 12 years for bilateral APAs and 10 years for unilateral APAs.
- **Extension of filing deadline for APA annual report:**
  Previously, the deadline to file an APA annual report was 6 months after the due date of corporate income tax returns. It has been extended so that an APA annual report deadline is within 12 months after the fiscal year (3 months' extension).
- **Introduction of Arbitration:**
  When a tax dispute arises for foreign companies, the mutual agreement procedure ("MAP") is the only way to resolve it. However, there are many limitations within the MAP. One of the critical limitations is that it is not mandatory for the tax authorities of relevant countries to reach an agreement; rather, they are only required to try to come to an agreement, which has been pointed out as a fundamental problem for some time. As a means to address this inherent limitation of the MAP, arbitration has been adopted by many OECD countries. Now, Korea is also adopting arbitration within the framework of the MAP. Although there are currently no tax treaties that Korea has signed with an arbitration provision, the adoption of arbitration in the domestic tax law will speed up the re-negotiation of tax treaties to adopt this new method of resolving tax disputes.

In sum, as we can see from the finalized tax amendments for 2021, the overall trend of these amendments has been in favor of taxpayers in the midst of COVID-19, which also caused the tax authorities to refrain from performing tax audits in 2020. In 2021, as all of us are becoming accustomed to a new way of life with COVID-19, so are the tax authorities, and it is expected that the number of tax audits this year will increase significantly.

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