



Global Tax Brief Vol. 2 (October 2026 Issue)

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Greetings from the Global Tax Center of Shin & Kim LLC.

Thank you for the warm reception and strong interest in the inaugural issue of Global Tax Brief.

Global Tax Brief is designed to help businesses respond strategically to a fast-changing global tax landscape. This second issue summarizes the international tax measures in the tax reform bills recently submitted to the National Assembly. We also highlight the key takeaways for multinational enterprises from recent court decisions, Tax Tribunal rulings, and tax authority interpretations.

We hope this issue provides practical guidance to help you manage cross-border tax risks and make timely, informed decisions.

The Global Tax Center of Shin & Kim LLC remains committed to delivering relevant and actionable tax insights for businesses operating globally.

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I. Legislative Update – 2026 Tax Reform Proposal (International Tax)

On August 3, 2026, the Ministry of Economy and Finance (“MOEF”) released its 2026 Tax Reform Proposal (the “Proposal”). Following Cabinet approval, the corresponding legislative amendment bills were formally submitted to the National Assembly during its regular session on September 3, 2026.

The statutory amendments remain subject to revision during National Assembly deliberations in December. Furthermore, accompanying subordinate regulations (namely, amendments to the Enforcement Decrees and Enforcement Rules) may undergo further modifications during the government rulemaking process. Taxpayers are strongly advised to monitor these legislative developments closely until the final legislation is enacted.

Below is an overview of the key international tax measures included in the Proposal:

(1) Implementation of the Global Minimum Tax “Side-by-Side Package”

The Proposal incorporates the “Side-by-Side Package” released by the OECD/G20 Inclusive Framework on BEPS into the Law for the Coordination of International Tax Affairs (“LCITA”).

• Side-by-Side Safe Harbor (new LCITA Article 80(4))

Where the Ultimate Parent Entity (“UPE”) of a multinational enterprise (“MNE”) group is located in a jurisdiction with a Qualified Side-by-Side Regime, the top-up tax of the group’s Constituent Entities under the Income Inclusion Rule (“IIR”) or the Undertaxed Profits Rule (“UTPR”) is deemed to be zero.

A Qualified Side-by-Side Regime requires that the jurisdiction (i) has a Qualified Domestic Tax System, (ii) has a Qualified Worldwide Tax System, and (iii) grants a foreign tax credit for Qualified Domestic Minimum Top-up Tax (“QDMTT”).

The safe harbor is expected to apply to GloBE Information Returns (“GIR”) or top-up tax allocation returns filed on or after January 1, 2027.

- **UPE Safe Harbor (new LCITA Article 80(5))**

Where the UPE of an MNE group is located in a jurisdiction that implements a Qualified Domestic Tax System, the UTPR top-up tax of Constituent Entities located in that jurisdiction may be deemed to be zero.

A Qualified Domestic Tax System requires, among other things, (i) a statutory corporate tax rate of at least 20% and (ii) a minimum tax regime ensuring an effective tax rate (“ETR”) of at least 15%.

The safe harbor is expected to apply to GIRs or top-up tax allocation returns filed on or after January 1, 2027.

- **Substance-based Tax Incentive Safe Harbor (new LCITA Article 80(7))**

Reductions in Covered Taxes attributable to Qualified Substance-based Tax Incentives (“QSTIs”) are treated as not reducing Covered Taxes when computing top-up tax and domestic top-up tax.

QSTIs are tax incentives calculated on the basis of expenditure or production, such as tax credits computed as a percentage of R&D spending, tangible asset acquisition costs, or volume of goods produced.

QSTIs are capped at the greater of 5.5% of eligible payroll costs or 5.5% of eligible tangible asset depreciation. Alternatively, if the group makes a five-year election, the cap may be set at 1% of the carrying value of eligible tangible assets.

The safe harbor is expected to apply to GIRs or top-up tax / domestic top-up tax allocation returns filed on or after January 1, 2027.

- **Simplified ETR Safe Harbor (new LCITA Enforcement Decree Article 138-3)**

A simplified ETR safe harbor will be introduced for jurisdictions in which no top-up tax or QDMTT arose in any fiscal year beginning within the 24 months preceding the start of the current fiscal year.

Under this safe harbor rule, top-up tax and domestic top-up tax for the jurisdiction may be deemed to be zero if the simplified ETR is 15% or more, or if simplified income is zero or less.

The safe harbor is expected to apply to GIRs or top-up tax / domestic top-up tax allocation returns filed on or after the effective date of the amended Enforcement Decree.

(2) Revised Threshold for Controlled Foreign Corporation (CFC) Rules (LCITA Article 27(1))

The low-tax threshold for CFC status will be relaxed from an actual effective tax burden of 17.5% or less (70% of the highest statutory corporate tax rate) to less than 15%. The scope of entities treated as CFCs is accordingly expected to narrow.

The rule is expected to apply to tax returns filed on or after January 1, 2027.

(3) Foreign Tax Credit for QDMTT (Corporate Income Tax Act (“CITA”) Enforcement Decree Article 94(1))

QDMTT paid in a foreign jurisdiction will be expressly included among the foreign corporate taxes eligible for the foreign tax credit (“FTC”).

The measure is intended to relieve double taxation where a foreign QDMTT and Korean corporate tax overlap, and to strengthen the basis for Korea's regime being recognized as a Qualified Side-by-Side Regime.

The rule is expected to apply to assessments or reassessments made on or after the effective date of the amended Enforcement Decree.

(4) Increase in the Flat Tax Rate for Foreign Employees (Restriction of Special Taxation Act (“RSTA”) Article 18-2)

The special flat income tax rate available to foreign employees will increase from 19% (20.9% including local income tax) to 21% (23.1% including local income tax).

The sunset date of the special regime will be extended from December 31, 2026 to December 31, 2029.

The rule is expected to apply to income arising on or after January 1, 2027.

(5) Tax Deferral for Dividends in Kind in Overseas Restructurings (CITA Article 18-4; CITA Enforcement Decree Article 72(2))

Where a foreign subsidiary wholly owned by a Korean company distributes all shares in a second-tier subsidiary to its Korean parent as a dividend in kind in connection with an overseas restructuring, the dividend will be fully excluded from the Korean parent's taxable income under the participation exemption, provided that the applicable requirements are satisfied. The Korean parent must record the acquisition cost of the distributed shares at 95% of their fair market value.

The participation exemption applies only if (i) the foreign subsidiary and the second-tier subsidiary are located in the same treaty jurisdiction, (ii) each subsidiary has carried on business for at least five years, and (iii) the transaction is tax-exempt or tax-deferred under the laws of that jurisdiction.

The rule is expected to apply to dividends received on or after January 1, 2027.

(6) Deferral of Deemed Dividend Taxation on Qualified Divisions of Foreign Subsidiaries (CITA Enforcement Decree Article 14)

Where, following a qualifying horizontal (shareholder-level) division or certain qualifying vertical (parent-level) divisions, a foreign subsidiary distributes shares in a newly established entity to its Korean parent, the Korean parent may carry over the book value of its existing shares, provided that the applicable statutory requirements are satisfied.

The book-value carryover treatment applies only if (i) the dividing foreign subsidiary is incorporated in a treaty jurisdiction and has carried on business for at least five years, (ii) the divided business constitutes an independently viable business line and all of its assets and liabilities are transferred, and (iii) the transaction is tax-exempt or tax-deferred under the laws of that jurisdiction.

The rule is expected to apply to divisions occurring on or after the effective date of the amended Enforcement Decree.

II. Recent Court Decisions

(1) Whether a Profit-Margin-Linked True-Up Payment Constitutes Royalty Income (Supreme Court Decision 2026Du30813 (September 3, 2026))

a. Overview

The plaintiff, a Korean company, engaged in the import, distribution, and sale of products manufactured by an Italian affiliate in Korea. The plaintiff was granted the right to exploit the group's trademarks on store signage and trade names of its specialty boutiques, and it complied with quality standards covering store interiors, staff conduct, and product packaging.

Under the intercompany agreement between the parties, if the plaintiff's retail operating margin fell below the designated arm's length range, the Italian affiliate would make a compensatory payment to the plaintiff under the contractual true-up mechanism; if the plaintiff's retail operating margin exceeded the median of the arm's length range, the plaintiff would be obligated to pay the Italian affiliate an amount calculated under the same mechanism.

When the plaintiff made a true-up payment to the Italian affiliate for 2017 under the agreement, the tax authority characterized the payment as consideration for the use of trademarks and know-how (i.e., royalty income) and imposed a corporate tax withholding assessment.

The Supreme Court upheld the tax authority's withholding assessment. On the question of whether the contractual true-up payment constituted Korean-source royalty income subject to withholding, the Supreme Court held that displaying internationally renowned trademarks on store signage and trade names serves the essential, source-identifying function of a trademark by indicating the origin and quality of the goods to consumers. Because the true-up payment was contractually predicated on this trademark utilization, determining the final payment amount by reference to the retail operating margin did not alter the fundamental character of the payment as a royalty.

The Court also highlighted that the plaintiff's compliance with quality standards and maintenance of brand reputation contributed to enhancing the value of the trademarks for the foreign affiliate.

The Court further held that the payment could constitute consideration not only for the use of trademarks, but also for commercial information and know-how provided by the foreign affiliate, including store-operation and quality-control standards. It also concluded that treating this payment as royalty income, while treating payments under other distribution agreements

differently, did not violate the substance-over-form principle or the principle of tax equity. The Court therefore upheld the withholding tax assessment.

b. Implications

Under this decision, payments between related parties may be recharacterized as royalty income where they are in substance linked to the use of trademarks, brand operating standards, or business know-how, even if they are labeled as “transfer pricing adjustments”, “profitability compensation”, or “profit true-ups” and are tied to operating margins.

Multinational enterprises should therefore assess in advance whether contractual true-up payments, regardless of their label, may be recharacterized as royalties in substance, to avoid unexpected tax exposure.

(2) Per-Country Limitation Applies to Carryforwards of Foreign Tax Credits (Supreme Court Decision 2026Du30835 (September 23, 2026))

a. Overview

The plaintiff played for a professional football club in China and then for a professional football club in Japan from 2019 to 2021. He filed and paid Korean worldwide income tax on his Japanese-source income and other income.

In his tax filings, he claimed foreign tax credits for both the income tax paid in Japan and the income taxes paid in China in 2018, which had exceeded the credit limitation for that tax year and were carried forward to 2019. The tax authority disallowed the carryforward credit from China, asserting that applying it against Japanese-source income violated the per-country limitation method. Consequently, the tax authority issued a corrected worldwide income tax assessment.

The Supreme Court held that the plaintiff was a Korean tax resident under the Income Tax Act, as he maintained close ties to Korea: he kept a home in Korea where he lived with his family and engaged in domestic real estate transactions, a rental business, and football education ventures. The Court further held that, even though he had a permanent home in both Korea and Japan, his “center of vital interests” under the Korea–Japan tax treaty was located in Korea, considering that he remitted most of his Japanese earnings to Korea and that his family, real estate, and business activities were based in Korea for the most part.

Regarding the foreign tax credit issue, the Court reasoned that, given the regime's purpose of preventing foreign taxes paid in high-tax jurisdictions from eroding Korean tax on domestic-source

income, the credit limitation for foreign income taxes from multiple countries must be computed separately on a country-by-country basis.

Citing the 2015 amendment to the Income Tax Act Enforcement Decree, which established the per-country limitation method for foreign tax credits and the corresponding transitional rules requiring existing carryforwards to be allocated by country, the Court held that the per-country limitation method also applies to foreign taxes carried forward from prior tax years, including where income arose in different countries across different tax years. Accordingly, the foreign taxes carried forward from China could not be credited against the credit limitation for income subsequently earned in Japan, and the tax authority's assessment was upheld.

b. Implications

This decision is significant both as a key precedent on determining the residence of dual residents and as clear authority that the per-country limitation method for foreign tax credits applies not only to multi-country income arising in the same tax year, but also to credits carried forward across different tax years.

Taxpayers working or doing business in multiple countries should therefore track their credit limitations and carryforward balances separately for each country in which foreign taxes were paid.

III. Recent Tax Tribunal Decision

(1) Transfer Pricing Assessment Questioning the Functions and Risks of Overseas Subsidiaries and the Reasonableness of Transfer Pricing Adjustments (Tax Tribunal Decision 2025Seo2599 (July 2, 2026))

a. Overview

The taxpayer, a Korean manufacturer and seller of steel pipes, sold finished products to its wholly owned subsidiaries BCo (United States) and CCo (Canada) (together, the "Foreign Subsidiaries"), and supplied semi-finished green pipes to BCo. BCo and CCo resold the finished products to unrelated local customers. BCo outsourced heat treatment, threading, and coupling processes for green pipes to local contractors and sold them as finished products.

For fiscal years 2020 through 2023, the tax authority divided the transactions with the Foreign Subsidiaries into resale transactions and manufacturing transactions. Finding that the prices in each fell below the arm's length price, it made the resulting transfer pricing adjustment with respect to taxable income and imposed an underreporting penalty.

The issues were: (i) whether the Foreign Subsidiaries should be characterized as fully fledged distributors or manufacturers, or as limited-risk distributors or contract manufacturers based on an analysis of their functions, assets, and risks; (ii) whether the selection of benchmark companies by the tax authority was reasonable; (iii) whether a multi-year analysis was required; (iv) whether antidumping duty refunds received by BCo should be treated as non-recurring items requiring a comparability adjustment in determining the arm's length price; and (v) whether transactions involving semi-finished goods that did not undergo heat treatment could be classified as manufacturing transactions.

The tax authority argued that: (i) in the resale transactions, the Foreign Subsidiaries bore only limited risk, as they held no warehouses and set prices under the taxpayer's "pricing guidelines", and were thus limited-risk distributors, while BCo was a contract manufacturer for green pipes because it bore inventory risk for processed finished products; (ii) it had selected the benchmark companies based on data obtained by its best efforts, and companies with similar functions and business models may be selected as benchmark companies despite differences in specific products; (iii) under the principle that tax is assessed by tax period, year-by-year comparison is the rule, and external factors equally affect the benchmark companies, so multi-year data was unnecessary; (iv) the deposit and refund of antidumping duties were recurring items that had continued for a long period of time; and (v) the American Petroleum Institute ("API") defines only companies that perform heat treatment as manufacturers and therefore classifying the products other than green pipes as resale transactions was proper.

The Tax Tribunal upheld the tax authority's arm's length adjustment. Specifically: (i) since the taxpayer directed the subsidiaries' operational and business policies through its "pricing guidelines" and strategic business team, the Foreign Subsidiaries could not be considered fully independent, and the taxpayer failed to demonstrate how benchmark companies should be selected under its preferred characterization; (ii) beyond pointing to the small number of benchmark companies, the taxpayer did not present specific and objective evidence proving that the tax authority's benchmark set had comparability defects; (iii) there was no evidence that the benchmark companies were unaffected by external factors, so the need for a multi-year analysis was not established; (iv) regarding the comparability adjustment, there was no specific evidence that the antidumping duty refunds were non-recurring, and it was inconsistent for the taxpayer to add duty deposits to cost of goods sold when paid while treating only the refunds as non-recurring

income; and (v) under API standards, threading and coupling without heat treatment do not constitute manufacturing.

In addition, the Tribunal held that the underreporting penalty exemption under LCITA Article 17(1)(iii) is not automatically granted upon the timely submission of a Local File. The exemption also requires that the transfer pricing method be selected and applied based on reasonable judgment. Because the taxpayer's selection of benchmark companies and comparability adjustments in the taxpayer's Local File were deemed arbitrary and inconsistent, the exemption did not apply.

b. Implications

This decision provides a comprehensive analysis of the standards for evaluating functions, assets, and risks, selecting benchmark companies, and making comparability adjustments in transfer pricing assessments involving overseas subsidiaries. It underscores that a defensible transfer pricing position requires rigorous, objective support at every stage—from accurately characterizing the transaction based on its substance to substantiating each comparability adjustment in detail.

Although the taxpayer timely submitted its Local File and claimed an exemption from the underreporting penalty, the Tax Tribunal upheld the penalty because the Local File lacked a reasonable analytical basis. Because penalty relief for transfer pricing adjustments depends on whether the taxpayer reasonably selected its transfer pricing method (LCITA Article 39(3)), taxpayers should ensure that their documentation—including any comparability adjustments—is supported by objective evidence and demonstrates that the analysis is not arbitrary. The tax authority, in turn, should establish concrete criteria for assessing reasonableness based on the circumstances existing at the time of preparing the Local File.

IV. Recent Tax Rulings

(1) Whether the Fees Paid for an Integrated Financial Portfolio Management System Constitute Royalty Income or Business Profits (Advance Ruling Sajeon-2026-Beopgyu-Gukjo-0035 (August 24, 2026))

The taxpayer entered into a subscription agreement with a U.S. company with no permanent establishment in Korea for a cloud-based “integrated financial portfolio management system.”

The system is provided as a non-exclusive service accessed via the internet. No source code or on-premise server is provided, and the subscriber is granted only limited, non-transferable usage rights. Any third-party data delivered through the system consists of publicly available market information and simply aggregated or compiled output datasets, which the taxpayer is permitted to use for internal purposes only.

Based on these facts, the taxpayer requested a ruling on whether the subscription fees should be characterized as royalties or as business income under the Korean CITA and the Korea-U.S. tax treaty.

The National Tax Service (“NTS”) ruled that the subscription fees do not constitute royalties, provided that: the Korean subscriber merely uses the system's output without receiving the underlying proprietary know-how embedded in the system; the external data provided through the system does not constitute non-public information; and the U.S. company does not grant any rights to exploit its copyrights (such as the right to reproduce, distribute, or adapt the system).

This ruling is of practical importance in that it reaffirms the established classification criteria under the CITA Basic Rulings regarding the heavily contested issue of whether software-related payments constitute royalties and clarifies the specific facts under which such payments are not considered royalties. When entering into software agreements with foreign vendors or making payments to them, businesses should carefully review the contractual terms—including whether proprietary source code is provided and the precise scope of any copyright license granted—as well as the manner in which the software is actually used.

(2) Taxation of Distributions from a Foreign ETF Arising from a Return of Capital (Ministry of Economy and Finance, Financial Tax Division-576 (June 26, 2026))

This ruling examines the tax treatment of return-of-capital distributions received from a foreign-listed ETF, specifically addressing whether such distributions constitute taxable dividend income. Generally, distributions of profits or surplus received by a domestic resident from a foreign ETF are subject to taxation as dividend income pursuant to Article 17(1) of the Income Tax Act. However, in the case of distributions arising from a reduction of capital of a foreign ETF, the MOEF ruled that only the portion exceeding the resident's acquisition cost of the ETF is taxable as a deemed dividend in accordance with Article 17(2) of the Income Tax Act.

The NTS had previously characterized all distributions received by individual investors from U.S.-listed ETFs as taxable dividend income, regardless of whether they represented a return of capital

or another type of payment (Written Ruling Seomyeon-2024-Sodeuk-4836, February 6, 2025).

In contrast, the MOEF's recent ruling indicates that, for distributions characterized as a capital reduction, only the portion exceeding the investor's acquisition cost is subject to tax as a deemed dividend. The significance of this ruling lies in its recognition that the scope of taxation must be determined on a case-by-case basis, depending on the specific factual circumstances of the distribution.

Under the NTS's previous position, even where a distribution from a U.S.-listed ETF was initially subject to U.S. withholding tax as a dividend and later reclassified as a non-taxable return of capital (resulting in a refund of the U.S. withholding tax), the entire amount remained subject to Korean tax as dividend income. Under the MOEF's ruling, however, if the return-of-capital distribution is determined to be money received by a shareholder due to a capital reduction under the Income Tax Act, the portion up to the investor's acquisition cost of the ETF is exempt from Korean tax. Since the tax treatment of foreign-listed ETFs will depend heavily on the facts and the statutory interpretations, investors should closely monitor the tax authority's future administrative guidelines and enforcement practices.

(3) Whether Consideration Paid by a Korean Company for Personal Services Performed Outside Korea by a Non-Resident or Foreign Corporation Constitutes Korean-Source Personal Services Income and Whether It Qualifies for Tax Treaty Relief (Written Ruling Seomyeon-2026-Gukje-Sewon-2130 (July 7, 2026))

The taxpayer is a Korean company that pays outsourcing fees to foreign companies and individuals located overseas for services such as music production and consulting. These foreign companies and individuals that have no permanent establishment in Korea perform the services entirely outside Korea and deliver only the work product to the taxpayer without entering Korea.

The main issues presented were: (i) whether consideration received by a non-resident or foreign corporation from a Korean company for personal services performed outside of Korea is classified as Korean-source personal services income; and (ii) if not, whether an application for a tax treaty exemption is required.

The NTS ruled that: (i) consideration received by a non-resident or foreign corporation with no permanent establishment in Korea for services performed entirely outside Korea does not constitute Korean-source personal services income. However, income from services provided by a person with specialized knowledge or special skills in science, technology, management, or other

fields constitutes Korean-source income if it is deemed to arise in Korea under an applicable tax treaty, even if the services are performed outside Korea. (ii) Where no Korean-source personal services income arises, an application for a tax treaty exemption is not required.

This ruling confirms that personal services performed outside Korea may, in certain cases, be treated as Korean-source income under a tax treaty. In other words, while consideration for personal services performed outside Korea generally is not Korean-source income, it may be Korean-source income where it represents consideration for services using specialized knowledge or skills in science, technology, management, or similar fields, and the applicable treaty deems it to arise in Korea (e.g., fees for technical services under the Korea-India tax treaty). Since the question of whether such income is taxable in Korea may depend on whether specialized technical services are characterized as royalties, personal services income, or business income, careful attention should be paid to income classification.

For Questions or Comments

- **Je-Heum Baik | Head of the Global Tax Center**
T. 02-316-4052 E. jhebaik@shinkim.com
- **Maria Chang | Deputy Head of the Global Tax Center**
T. 02-316-4165 E. mariachang@shinkim.com
- **Junseok Yoon | Executive Editor of the Global Tax Center**
T. 02-316-7212 E. jseyoon@shinkim.com
- **Hae-Yeong Paik | Executive Editor of the Global Tax Center**
T. 02-316-4106 E. hypaik@shinkim.com

SHIN & KIM
법무법인(유) 세종

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23F, D-Tower (D2), 17 Jongno 3-gil, Jongno-gu, Seoul 03155, Korea T. +82-2-316-4114 www.shinkim.com
