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Enforcement Penalty Regime for Failure to Comply with Request for Documents in Tax Audit: Key Implications for Taxpayers

Effective September 15, a new provision of the Framework Act on National Taxes (**FANT**) will authorize the Korean tax authorities (**NTS**) to impose an enforcement penalty on taxpayers who, without justifiable cause, do not provide requested information and documents during an audit (**New Enforcement Penalty Provision**).

This newsletter provides a brief overview of the New Enforcement Penalty Provision, its key features, and practical considerations for taxpayers in light of its implementation.

1. Legislative Background

Generally, annual changes to the Korean tax law and regulations proceed in the following order: first, the proposed changes to the tax law (**Tax Law Amendment(s)**) are announced around July each year; second, the Tax Law Amendments are deliberated and passed at the end of December; and third, the related presidential decrees and enforcement rules (collectively, the **Regulations**) related to the Tax Law Amendments are published around February or March of the following year. Initially, the Tax Law Amendment published in July 2024 did not include the New Enforcement Penalty Provision. However, during the October 2024 National Assembly deliberations, it was suggested that the existing fine regime alone was insufficient to secure appropriate information and documents in tax audits of multinational enterprises, leading to subsequent policy debates. Consequently, in addition to the Tax Law Amendment proposal, the New Enforcement Penalty Provision was introduced through an amendment to the FANT on February 27, 2025. Furthermore, the new provisions of the Presidential Decree of the FANT, which set forth matters concerning the New Enforcement Penalty Provision, were promulgated on June 2, 2025.

2. Differences between New Enforcement Penalty and Existing Fine Provisions

Under the New Enforcement Penalty Provision, for tax audits commencing on or after September 1, 2025, if a taxpayer fails, without justifiable reason, to submit requested information and documents required under the tax law, an enforcement penalty may be imposed following deliberation by the Enforcement Penalty Deliberation Committee. When notifying a taxpayer that the penalty may apply, the head of the regional tax office must grant a period of at least 30 days from the date of notification (**Grace Period**) during which the taxpayer may provide the requested information and documents. If the materials are not submitted within 30 days from the day after the Grace Period ends, the enforcement penalty may be imposed every 30 days, calculated at 0.1% to 0.2% of the taxpayer's average daily revenue, which is a very significant penalty since there is no cap on the maximum penalty.

The penalty period runs from the day after the Grace Period until the day before the taxpayer submits all requested information and documents or, if the tax audit ends before submission, until the day before the audit ends. Any period during which the audit is suspended is excluded from the penalty period. In other words, until all requested materials are submitted or the tax audit is concluded, the enforcement penalty may continue to accumulate. However, the enforcement penalty and a fine cannot be imposed concurrently for the same reason.

The New Enforcement Penalty Provision differs from the existing fine provision for failure to submit materials in that it does not have an upper limit on the amount imposed, whereas the existing fine provision had a cap of KRW 50 million. In addition, while the existing fine could, according to court precedents, be imposed only once in the same tax audit, the newly introduced enforcement penalty may be imposed repeatedly every 30 days. Furthermore, the New Enforcement Penalty Provision also differs from the existing fine provision in that the enforcement penalty is imposed following deliberation by the newly established **Enforcement Penalty Deliberation Committee**, and any challenge must be made through administrative litigation. These points are discussed separately in the following sections.

3. Enforcement Penalty Deliberation Committee

The new enforcement penalty may be imposed only after deliberation by this committee. In addition, the head of the tax office may, taking into account the degree of effort made to submit the requested materials and the reasons for non-submission, reduce the amount of the enforcement penalty by up to one-half or grant an exemption, following deliberation by the Enforcement Penalty Deliberation Committee.

The Enforcement Penalty Deliberation Committee will be established within the regional tax office, and the head of the regional tax office

serves as its chairperson. The members will consist of (i) up to six officials of the regional tax office designated by the head of the regional tax office, and (ii) up to thirteen external experts appointed by the head of the regional tax office (hereinafter, **External Members**). For each meeting, the chairperson will designate six members (including at least four External Members) to convene the meeting of the Enforcement Penalty Deliberation Committee.

It appears that there is not yet any explicit legislation regarding whether taxpayers will be granted an opportunity to present their views before the Enforcement Penalty Deliberation Committee. However, since taxpayers are guaranteed the opportunity to present their views in other committees convened during the course of a tax audit (e.g., the Review for Adequacy of Tax Imposition Committee and the Transfer Pricing Review Committee), it is possible. Therefore, it will be necessary to monitor whether subsequent legislation grants taxpayers the right to present their views.

4. Appeals Against the Enforcement Penalty

To contest the imposition of a fine, a taxpayer must file a written objection with the taxing authority, and as a result, the fine disposition loses its effect, with no need to pay the fine until the court's decision becomes final. In contrast, to contest the new enforcement penalty disposition, the taxpayer must challenge it through administrative litigation, and since whether an appeal is filed does not affect the validity of the disposition, the general rule will be that the enforcement penalty must be paid while disputing it (similar to contesting a tax assessment by paying the assessed amount and litigating).

5. Scope of Requested Information and Documents Submissions

In a tax audit, requests for material submissions are based on the NTS' statutory power to question and inspect. However, the relevant provisions of the tax law only state that "books, records, and other items" may be ordered to be submitted, without specifying their concrete scope or limits. In practice, tax auditors often request an extensive range of materials. While, in principle, such requests should be limited to materials necessary to determine the tax base and tax liability, it is not uncommon for requests to extend to internal documents, such as internal audit records and profit and loss statement of related parties, beyond ordinary accounting books. In particular, in tax audits of Korean subsidiaries of multinational enterprises, there are cases where the NTS requested submission of accounting records of the headquarters, which the subsidiary does not possess, or contracts containing trade secrets, leading to conflicts between taxpayers and the NTS.

The New Enforcement Penalty Provisions also define the triggering condition as a failure to fulfill the submission obligation “without justifiable reason,” without further elaboration on the scope of materials covered. This vagueness makes it difficult to assess when the penalty under New Enforcement Penalty Provisions will apply and raises the risk of arbitrary imposition. As a result, the ambiguities inherent in the current fine penalty provision remain unresolved under the New Enforcement Penalty Provisions.

Going forward, once the New Enforcement Penalty Provisions takes effect, refinement of the system will be necessary. Specifically, criteria should be reinforced for recognizing what constitutes a “justifiable reason,” as well as guidelines for determining when a taxpayer’s submissions are deemed sufficient. In addition, based on judicial determinations regarding the types of materials and situations in which submission may not be reasonably possible, we expect the New Enforcement Penalty Provisions will be imposed only where a taxpayer deliberately withholds materials that are so critical that their absence would materially impede the tax audit.

6. Takeaways

As discussed above, the New Enforcement Penalty Provision is expected to have its details supplemented and refined after it takes effect from September 15, 2025. In particular, the Presidential Decree to the FANT grants the Commissioner of the NTS the authority to prescribe, by public notice, matters necessary for the imposition and collection of the new enforcement penalty that are not otherwise specified in the Regulations. Taxpayers should keep a careful watch on forthcoming notices and monitor how the penalty will be enforced in practice, as well as how appeals will be resolved.

In addition, for taxpayers expecting a tax audit in the near future, it will be prudent to conduct a pre-tax audit review/health check not only to assess overall tax risks, but also to distinguish in advance between materials that can and cannot be submitted, and, where submission is possible, to consider the practical preparation time required in order to respond efficiently to the New Enforcement Penalty Provisions. In particular, for multinational enterprises, it is important to review in advance and establish response strategies regarding whether the new enforcement penalty may be imposed on documents that the Korean subsidiary is not required to maintain under the tax law, materials of foreign affiliates that are not possessed or managed, or materials whose collection and organization would require a significant amount of time.

The Tax Group at Lee & Ko has extensive experience assisting clients with regulatory developments and managing related risks. Our services cover the full spectrum, including tax audit defense, pre-audit reviews, and tax litigation. We encourage you to use this opportunity to evaluate your current compliance status and, where necessary, take proactive measures to minimize exposure to penalties and potential legal disputes.

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