2024 Tax Law Amendment Proposal - International Tax

On July 25, 2024, the Korean Ministry of Economy and Finance released the 2024 Tax Law Amendment Proposal which includes, among other things, the 2-year deferral of crypto gains tax and abolishment of financial investment income tax. The proposed amendments are subject to approval by the National Assembly (Korean Parliament) and will mostly become effective from January 1, 2025 if approved. We have summarized the key proposed changes which relate to international tax or may have an impact on multinational enterprises ("**MNEs**") with investments or operations in Korea. We will monitor the developments of the legislative process and provide additional updates if there are any significant changes to the proposed amendments.

1. Improving the tax credit system

(1) Higher integrated investment tax credit for incremental investment (Act on Restriction of Special Taxation (often referred to as the Tax Preferential Control Act ("TPCA")) §24(1))

The Korean Government previously announced through the 2024 Economic Policy Direction that it will extend the application of the temporary integrated investment tax credits (additional 2-6% base tax credit and additional 10% tax credit for incremental investment) available for the tax year including December 31, 2023 for one year until December 31, 2024.

However, under the 2024 Tax Law Amendment Proposal, (i) the application of the temporary additional base tax credit will not be extended, and instead, (ii) the additional tax credit for incremental investment will be permanently increased to 10%.

[Table 1: Credit Rates for Integrated Investment Tax Credit]

Technology	Base Tax Credit for Current Period Investment			Additional Tax Credit for Incremental Investment
	Large Companies	Mid-Sized Companies	Small or Medium-Sized Companies	
General Technology	1%	5%	10%	3→10%
New Growth / Original Technology	3%	6%	12%	

Technology	Base Tax Credit for Current Period Investment			Additional Tax Credit for Incremental Investment
	Large Companies	Mid-Sized Companies	Small or Medium-Sized Companies	
National Strategic Technology	15%		25%	4→10%

☐ Additional tax credit for incremental investment permanently increased (to remain the same as the additional tax credit temporarily granted in 2023)

The proposed amendment aims to improve the competitiveness of the strategic industry and promote corporate investment. The proposed amendment will be effective for supplies made on or after January 1, 2024.

(2) Adjusting the scope of mid-sized companies (TPCA Presidential Decree ("PD") § 6-4, §9)

The tax benefits (e.g. tax credits and tax exemptions) provided to companies under the TPCA differ based on the size of the company. Under the TPCA, a company is classified as (i) a 'small or medium-sized company' if its sales revenue is less than the industry standard (KRW 40B-150B), and (ii) a 'mid-sized company' if its average sales revenue for the past 3 years is less than KRW 300B, regardless of its industry (KRW 500B for R&D tax credit).

In order to improve taxation equity among mid-sized companies across different industries and to improve the tax system, the 2024 Tax Law Amendment Proposal amends the sales revenue threshold of mid-sized companies to "3 times the sales revenue threshold of small or medium-sized companies in the same industry (5 times for R&D tax credit)". In addition, the 2024 Tax Law Amendment Proposal excludes real estate leasing business from the list of eligible industries for mid-sized companies.

[Table 2: Sales Revenue Thresholds for Different Industries]

Industry	Clothing manufacturing, primary metal manufacturing, etc.	Food manufacturing, construction, wholesale and retail, etc.	Transportation and warehousing, information and communication, etc.	Healthcare and social welfare, other personal services, etc.	Accommodation and food services, educational services, etc.
Small or Medium-sized Companies	KRW 150B	KRW 100B	KRW 80B	KRW 60B	KRW 40B
Mid-sized companies (3 times)	**KRW 450B**	**KRW 300B**	**KRW 240B**	**KRW 180B**	**KRW 120B**

For R&D credit (5 times)	KRW 750B	KRW 500B	KRW 400B	KRW 300B	KRW 200B

(3) Streamlining when members of a consolidated group can apply the regulations for small or medium-sized companies / mid-sized companies (Corporate Income Tax Act ("CITA") §76-22)

Under the CITA, if a Korean company owns 90% or more of the total issued and outstanding shares or total equity of another Korean company ("**consolidated control**"), they can elect to form a tax consolidated group based on the economic substance and file consolidated corporate tax returns.

A tax consolidated group is viewed as one Korean company, and for purposes of applying the TPCA, etc., each member of a tax consolidated group is viewed as a small or medium-sized company only if the tax consolidated group as a whole also qualifies as a small or medium-sized company. In other words, even if each member of a tax consolidated group qualifies as a small or medium-sized company, the members cannot apply the tax regulations applicable to small or medium-sized companies (i.e. provisions relating to tax credit or exemption) unless the tax consolidated group as a whole also satisfies the small or medium-sized company threshold.

However, the current tax law does not have a similar requirement for the tax regulations applicable to mid-sized companies which has caused ambiguity in practice. The 2024 Tax Law Amendment Proposal resolves this uncertainty and makes it clear that the members of a tax consolidated group can apply the tax regulations applicable to mid-sized companies if (i) the tax consolidated group as a whole qualifies as a mid-sized company, and (ii) each member of the tax consolidated group qualifies as a small or medium-sized company or mid-sized company.

The proposed amendment applies to the calculation of corporate tax for income generated in consolidated tax years beginning on or after January 1, 2025.

Going forward, if a tax consolidated group as a whole does not satisfy the requirements of a small or medium-sized company / mid-sized company and is classified as a general company, all members of the tax consolidated group will be treated as a general company (not a small or medium-sized company / mid-sized company) for purposes of applying the TPCA, etc.

(4) Expanding the scope of costs eligible for R&D tax credit (TPCA PD §9, Annex 6)

Compared to general technology, higher R&D tax credits are available for national strategic technology and new growth / original technology (collectively, "**national strategic technology**"). However, under the current law, if a R&D staff performs R&D activities in relation to both general technology and national strategic technology, the general R&D credit rate applies to the entire employment costs relating to that staff.

The 2024 Tax Law Amendment Proposal provides that, if a R&D staff primarily performs R&D activities in relation to national strategic technology, the employer can apply the higher R&D credit rates available for national strategic technology in respect of the relevant portion of the staff's employment costs (prorated based on the time spent on national strategic technology-related activities). This increased tax benefit provided under the proposed amendment is expected to promote R&D activities in advanced technology industries.

2. Abolishing the requirement to value shares held by the largest shareholder, etc. at a premium (Inheritance Tax and Gift Tax Act ("IGTA") §63(3))

When valuing shares or equity interests under the IGTA, shares held by the largest shareholder and its related parties must be valued by adding a 20% premium ("**Largest Shareholder Premium Valuation**", also often referred to as the "**20% Uplift Rule**"). The 20% Uplift Rule has drawn substantial criticism because (i) it is difficult to measure the premium for management control at the time of receiving an inheritance / gift, (ii) it is problematic to apply a 20% premium uniformly without considering the characteristics of individual transactions, and (iii) globally, it is very rare to apply such premium for purposes of valuing management control.

In response to such criticism, the 2024 Tax Law Amendment Proposal abolishes the 20% Uplift Rule for inheritances or gifts received on or after January 1, 2025. The proposed amendment should support business successions and lay the foundation for continuous growth and employment by Korean companies. It is also expected to facilitate corporate restructuring as it reduces the tax burden for transactions involving the transfer of shares or equity interests.

Currently, if an MNE group restructuring involves the transfer of shares in Korean subsidiaries, the Korean subsidiaries' shares must be valued according to the 20% Uplift Rule for purposes of calculating the Korean capital gains tax and securities transaction tax. Under the proposed amendment, the 20% Uplift Rule will no longer apply to such group restructuring from January 1, 2025.

3. Abolishing financial investment income tax (Personal Income Tax Act ("PITA") Chapter 2-2, PTCA §14, etc.)

In 2020, the Korean government announced that it will introduce financial investment income tax in 2023 but subsequently delayed the implementation to 2025. It now appears that the Korean government will repeal this financial investment income tax under the 2024 Tax Law Amendment Proposal.

Financial investment income tax was supposed to apply on gains realized from the sale, redemption, etc. of financial investment products such as shares, bonds, funds and derivatives. Under the financial investment income tax regime, capital gains from the sale of Korean-listed shares and bonds, which are currently non-taxable for investors other than the largest shareholders, were to become taxable. As such, the proposed repeal of financial investment income tax is expected to support Korean investors participating in the Korean capital markets. However, it is somewhat uncertain whether the main opposition party, which holds over 60% of the parliamentary seats, will agree to the repeal of the financial investment income tax.

4. Deferring taxation of cryptocurrency gains (PITA §37(5), PITA Supplementary Regulations, CITA Supplementary Regulations, etc.)

The 2024 Tax Law Amendment Proposal defers the taxation of cryptocurrency gains from 2025 to 2027.

Under the current law, gains recognized by individuals or foreign corporations from selling or lending crypto-assets on or after January 1, 2025 are supposed to be taxed as "other income" (at 22% including local income surtax for individuals, and the lower of 11% of the payment amount or 22% of the gain for foreign corporations). However, the 2024 Tax Law Amendment Proposal provides that this crypto tax will apply to cryptocurrency gains recognized on or after January 1, 2027. The primary reason for the proposed 2-year delay is to protect crypto-asset investors and markets. It also seems to take into account that the international exchange of tax relevant information on crypto-assets for 2026 will begin in 2027.

5. Streamlining the criteria for denying excessive interest deduction (Law for the Co-ordination of International Tax Affairs ("LCITA") PD §55)

In accordance with the recommendations in OECD/G20 BEPS Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Korea implemented a new rule in 2019 to limit net interest deductions (i.e. interest expense in excess of interest income). Under this rule, if a Korean company's net interest expense relating to foreign related party debt exceeds a certain threshold (30% of earnings before net interest and depreciation expenses), the excess net interest expense is treated as non-deductible for tax purposes. However, this interest deduction limitation rule does not apply to Korean companies operating in the financial and insurance industry as companies in this industry is highly leveraged due to industry characteristics. Therefore, Korean companies operating in the financial and insurance industry can deduct their entire interest expense.

In the Korean Standard Industrial Classification ("**KSIC**") codes, the financial and insurance industry includes "holding companies (industry code 64992)". Although general holding companies fall under the financial and insurance industry in the KSIC codes, unlike financial holding companies, general holding companies are not typically highly leveraged due to industry characteristics. Further, the Monopoly Regulation and Fair Trade Act provides that general holding companies are not 'companies engaged in financial or insurance business'.

Under the 2024 Tax Law Amendment Proposal, general holding companies will be subject to the interest deduction limitation rule implemented in 2019 despite the fact that they fall under the financial and insurance industry in the KSIC codes. The interest deduction limitation rule will apply to interest incurred by general holding companies in the tax year beginning on or after January 1, 2025 (i.e. their excess net interest expense will be treated as non-deductible for tax purposes).

6. Improving the criteria for determining individual tax residency (PITA §5(3)-(5), PITA PD §4(2) and (3), PITA Enforcement Regulations ("ER") §2(1) and (2))

Under the PITA, Korean resident individuals are required to pay Korean personal income tax on their worldwide income. The PITA defines the term "resident" as 'an individual who has a domicile in Korea or has a place of residence in Korea for 183 days or more'. Whether an individual qualifies as a resident based on his/her place of residence is currently determined by whether he/she has had a place of residence in Korea for 183 days or more during a single tax year. However, the 2024 Tax Law Amendment Proposal provides that the tax year immediately preceding the relevant tax year should also be considered in determining the period in which an individual has a place of residence in Korea. In other words, going forward, an individual who has maintained a place of residence in Korea for 183 days or more during the period from the preceding tax year to the relevant tax year will be considered a Korean resident under the PITA.

In addition, the PITA currently provides that if an individual who has a place of residence in Korea temporarily leaves Korea, he/she should still be considered as having maintained a place of residence in Korea during the period of their temporary absence, to the extent the purpose of their temporary absence is travel, medical treatment, etc. The 2024 Tax Law Amendment Proposal provides additional details on this qualified purpose and makes it clear that the purpose of 'travel, medical treatment, etc.' includes (i) personal reasons such as travel, medical treatment, visiting family or relatives, etc., (ii) professional or business-related reasons such as business trips, training, etc., and (iii) other reasons deemed equivalent to (i) and (ii).

Further, under the current PITA, if a resident leaves Korea and becomes a non-resident, the transition from resident to non-resident is deemed to occur on the day following the departure date and that individual's tax period in Korea is deemed to end on the departure date. However, the PITA is silent on the tax period, etc. in cases where a non-resident becomes a Korean resident. In this regard, the 2024 Tax Law Amendment Proposal provides clarification and specifies that (i) for transition from resident to non-resident, the period up to the departure date and the period starting from day following the departure date will each be treated as separate tax years, and similarly, (ii) for transition from non-resident to resident, the period up to the day preceding the day on which a non-resident becomes a resident and the period starting from the day on which that non-resident becomes a resident will each be treated as separate tax years.

The above proposed amendments are expected to substantially reduce the uncertainty regarding the determination of an individual's resident / non-resident status. These proposed amendments will be effective for tax years beginning on or after January 1, 2026.

7. Streamlining the tax exemption system for non-resident individuals / foreign corporations investing in government bonds, etc.

(1) Simplifying the tax exemption application and tax withholding procedures for investments via overseas investment vehicles ("OIVs") (PITA §119-3, PITA PD § 179-4, CITA §93-3, CITA PD §132-4)

Since 2023, non-resident individuals and foreign corporations were exempt from Korean tax on the interest and capital gains realized from Korean government bonds and Monetary Stabilization Bonds (collectively, "**Government Bonds**").

For non-resident individuals and foreign corporations investing in Government Bonds via OIVs, in principle, they can only apply this special tax exemption if each beneficial owner (i.e. the upper-level investors) submits a tax exemption application and supporting documents such as a certificate of tax residence.

Industry groups have expressed concerns about the challenges and difficulties they face in collecting information from each beneficial owner. In response, the 2024 Tax Law Amendment Proposal introduces a special rule which deems OIVs as the beneficial owner of the interest and capital gains realized from Government Bonds in cases where non-resident individuals or foreign corporations invest in Government Bonds via OIVs (including both publicly offered and privately offered vehicles). Therefore, the interest and capital gains these OIVs realize from Government Bonds will be exempt from taxation in Korea without having to verify the upper-level investors. However, if any of the upper-level investors are Korean resident individuals or Korean corporations, they must directly report and pay tax on the income they receive as no tax is withheld at the time of payment of income.

The proposed amendment is expected to increase investment demand by making it easier for investors to invest in Korean Government Bonds. The proposed amendment will be effective for payments made on or after January 1, 2025.

(2) Allowing non-resident individuals / foreign corporations to directly submit tax refund applications (PITA §119-3(6) and (7), CITA §93-3(6) and (7), PITA PD § 179-4(7) and (8), CITA PD §132-4(7) and (8) newly introduced)

Under the current law, if non-resident individuals or foreign corporations realize interest or capital gains from Government Bonds but cannot apply a tax exemption in respect such interest or capital gains at the time of receipt of the income, they cannot directly submit tax refund applications. Instead, they can only apply for and receive tax refunds through their withholding agents.

In order to improve the tax compliance process for foreign investors, the 2024 Tax Law Amendment enables non-resident individuals and foreign corporations to directly submit tax refund applications from January 1, 2025. Under the proposed amendment, if a non-resident individual or foreign corporation cannot apply a tax exemption in respect of the interest or capital gains realized from Government Bonds at the time of receipt of the income, the non-resident individual / foreign corporation, the income payor or a qualified foreign financial institution can directly submit a tax refund application and seek a refund of the tax paid within 5 years from the 11th day of the month following the month of tax withholding.

8. Allowing tax refund applications for underreporting of tax credit (Framework Act on National Taxes §45-2(1))

Under Article 45-2(1) of the Framework Act on National Taxes, a taxpayer can submit a tax refund application if the taxpayer over-reported the tax base and tax liability, or under-reported the tax loss or refundable tax amount. Under the current Framework Act on National Taxes, if a taxpayer under-reports applicable tax credit for a particular tax year and the taxpayer makes a tax loss in that year, the taxpayer cannot submit a tax refund application to increase its carried forward tax losses because the taxpayer does not pay any tax for that year. The Korean Supreme Court also confirmed that taxpayers cannot submit tax refund applications in respect of carried forward tax credits (Supreme Court Decision 2019Du62352, April 9, 2020). Carried forward tax losses and carried forward tax credits effectively have the same characteristics as they both reduce future tax liability. As such, many taxpayers have expressed concerns regarding the current law which allows tax refund requests that increase carried forward tax losses but does not allow tax refund requests that increase carried forward tax credits.

In response to such criticism, the 2024 Tax Law Amendment Proposal allows taxpayers to submit tax refund applications for under-reporting of applicable tax credit. That is, taxpayers will be able to request tax refunds in respect of tax credits even if their request does not change the amount of tax payable for the relevant year.

The proposed amendment will be effective for tax refund applications submitted on or after January 1, 2025.

In addition, the 2024 Tax Law Amendment introduces a special transitional provision which temporarily allows taxpayers to submit tax refund applications for carried forward tax credits that arose in tax years for which the normal tax refund request period (i.e. 5 years) has not already passed. Taxpayers wishing to apply this special transitional provision must file tax refund applications by December 31, 2025. It is also important to note that tax credits can only be carried forward for 10 years. This means that only the tax credits that arose within 10 years from the year of utilization will have the actual effect of reducing tax liability.

9. Requiring submission of treaty exemption applications and payment statements for Korean-sourced personal service income (PITA §156-2, PITA PD §216-2, CITA §98-4, CITA PD §162-2)

Under the current PITA and CITA, if a non-resident individual or foreign corporation wants to apply a tax exemption in respect of their Korean-sourced income under a tax treaty, the non-resident individual or foreign corporation must submit an Application for Non-Taxation / Tax Exemption, together with relevant supporting documents (documents to substantiate the beneficial ownership over the Korean-source income received) to the income payer. However, for Korean-sourced business profits and personal service income, non-resident individuals and foreign corporations can apply a tax exemption under a tax treaty without having to submit these documents.

This document submission exemption for personal service income will no longer apply. The 2024 Tax Law Amendment Proposal requires non-resident individuals and foreign corporations to submit an Application for Non-Taxation / Tax Exemption and relevant supporting documents to the income payer to apply a tax exemption in respect of Korean-sourced personal service income under a tax treaty going forward.

In addition, for Korean-sourced personal service income derived by non-resident individuals and foreign corporations, withholding agents (i.e. income payers) do not have an obligation to submit payment statements. However, under the 2024 Tax Law Amendment Proposal, withholding agents of Korean-sourced personal service income will be required to submit relevant payment statements.

The proposed amendments will be effective for payments made on or after January 1, 2026.

10. Streamlining the procedure for tax refund applications relating to taxpayers' transfer pricing position (LCITA §6)

Under the current LCITA, a taxpayer submitting a tax refund application in relation to its transfer pricing position (i.e. seeking a tax refund on the basis that the transfer pricing position taken in the original tax return results a higher tax liability than that based on an arm's length price) is required to submit a Transaction Price Adjustment Report. The 2024 Tax Law Amendment Proposal provides that such taxpayer will also be required to submit 'documents substantiating the arm's length price'. Details about 'documents substantiating the arm's length price' will be prescribed by the LCITA PD and ER.

In addition, the 2024 Tax Law Amendment Proposal extends the processing time for tax refund applications relating to taxpayers' transfer pricing position (currently 2 months from the date of receipt of the tax refund application) to 6 months from the date of receipt of the tax refund application.

The 2024 Tax Law Amendment Proposal will also introduce a new provision to allow the Korean tax authority to request supplementation of documents within a 30-day period if they determine that the documents submitted initially are insufficient. The time taken to request and provide additional documents will be excluded from the tax refund application processing time.

The proposed amendments will be effective for tax refund applications filed on or after January 1, 2025.

11. Removing the deadline for requiring submission or supplementation of documents relating to foreign subsidiaries (LCITA §58)

Under the current LCITA, if a taxpayer fails to submit documents (or submits false documents) regarding its foreign subsidiaries, etc., the Korean tax authority can request submission or supplementation of documents within 2 years from the day following the statutory due date for submission of relevant documents. The 2024 Tax Law Amendment Proposal removes this 2-year period, and enables the tax authority to request submission or supplementation of documents in relation to taxpayers' foreign subsidiaries at any time (based on our understanding, this proposed amendment should also be subject to the statute of limitations for tax inquiry, etc. (e.g. currently 5 years)).

The proposed amendment will be effective for document submission / supplementation requests made on or after January 1, 2025. That is, if the current 2-year period for requesting document submission / supplementation expires on or before December 31, 2024, the current rule applies and the tax authority cannot request document submission / supplementation under the proposed new rule.

12. Amendments to the Korean Global Anti-Base Erosion ("GloBE") rules

The 2024 Tax Law Amendment Proposal clarifies the terms used in the Korean GloBE rules and incorporates the OECD Model Rules, Commentaries, and Administrative Guidance into the domestic tax law. The key proposed changes are summarized below.

(1) Introducing and refining the safe harbour rules

(a) Transitional Undertaxed Payments Rule ("UTPR") safe harbour for the ultimate parent entity jurisdiction with the nominal statutory corporate tax rate of at least 20% (LCITA §80(2), (3) and (4))

The 2024 Tax Law Amendment Proposal incorporates the transitional UTPR safe harbour into the Korean tax law, following the OECD Administrative Guidance published in July 2023.

This transitional UTPR safe harbour provides transitional relief by deeming the UTPR top-up tax amount calculated for the ultimate parent entity jurisdiction to be zero for each fiscal year during the transition period (fiscal years that begin on or before December 31, 2025 and end before December 31, 2026) if the ultimate parent entity jurisdiction has a corporate income tax that applies at a rate of at least 20%. When an MNE group qualifies for both a UTPR safe harbour and transitional country-by-country ("**CbCR**") safe harbour in the ultimate parent entity jurisdiction in a fiscal year, the MNE can choose which safe harbour to apply for that jurisdiction.

U.S. multinationals have been closely monitoring whether Korea will introduce the UTPR safe harbour. This is because U.S. companies will be forced to account for the UTPR exposure on their financial statements beginning in the first quarter of 2025, even though no UTPR top-up tax should be imposed unless the relevant jurisdictions implement the UTPR safe harbour into their domestic tax laws. The proposed amendment is expected to significantly reduce the tax compliance burden of the U.S. multinationals.

The proposed amendment will be effective for filings made on or after January 1, 2025.

(b) Permanent safe harbour

The 2024 Tax Law Amendment Proposal provides that the top-up tax for a jurisdiction will be deemed to be zero for a fiscal year when the tested jurisdiction has met the requirements of the permanent simplified calculations safe harbour. The OECD Safe Harbours and Penalty Relief published in December 2022 includes a framework for the development of a permanent safe harbour that would reduce the number of computations and adjustments an MNE is required to make under the GloBE rules, stating that the calculation methods will be developed and set out in subsequent administrative guidance.

If the simplified calculations for a jurisdiction meets the requirements of the de minimis, routine profits or effective tax rate test, that jurisdiction will qualify for the permanent safe harbour. The LCITA did not include this permanent safe harbour until now as the detailed calculation methods have not yet been developed, but under the 2024 Tax Law Amendment Proposal, specific requirements will be prescribed by the LCITA PD.

The proposed amendment will be effective for filings made on or after January 1, 2025.

(c) Clarifying the application of the transitional CbCR safe harbour for MNE groups with a joint venture, etc.

The OECD Administrative Guidance published in December 2023 clarified that, for purposes of applying the transitional CbCR safe harbour tests, constituent entities, stand-alone joint ventures, and joint venture groups that are located in the same jurisdiction are treated as being in separate tested jurisdictions. More specifically, all constituent entities in the jurisdiction are treated as being in one tested jurisdiction, all entities of the same joint venture group located in the jurisdiction are treated as being in one tested jurisdiction, and each standalone joint venture located in the jurisdiction is treated as being in one tested jurisdiction (i.e. three tested jurisdictions for purposes of the transitional CbCR safe harbour).

The 2024 Tax Law Amendment Proposal follows the clarification provided in the OECD Administrative Guidance, and will be effective for filings made on or after January 1, 2025.

(2) Transitional filing deadline (LCITA §83(1) and (4), §84(1))

The GloBE Information Return must be filed no later than 15 months after the last day of the reporting fiscal year, but for the transition year (i.e. the first fiscal year that the MNE group comes within the scope of the GloBE rules), this deadline is extended to 18 months. However, as a result of the GloBE rules applying to fiscal years beginning on or after January 1, 2024, some MNE groups (which subsequently change the tax year) may be subject to accelerated filing deadlines and be required to file the GloBE Information Return before June 30, 2026.

Following the OECD Administrative Guidance, the 2024 Tax Law Amendment Proposal provides that the due date for filing the GloBE Information Return will not be before June 30, 2026.

(3) Detailed methodologies for determining consolidated revenue to be prescribed by the LCITA PD (LCITA §62(5))

The OECD and Korean GloBE rules apply to MNE groups that have revenues equal to or in excess of the EUR 750 million in two of the past four years. However, consolidated revenues are taken from the consolidated profit and loss statement of an MNE group, and revenues as defined in the financial accounting standard may be presented in different ways by different MNE groups. Some may present all revenues on a single line and others may identify and separately present various types of revenues. Further, depending on the financial accounting standard used, some items (e.g. extraordinary or non-recurring items) may be segregated and presented separately from revenues by some MNE groups but included and presented as part of revenues by others.

In order to increase certainty and uniformity in the application of the GloBE rules, the OECD Administrative Guidance published in December 2023 clarified that "revenue" includes 'the inflow of economic benefits arising from delivering or producing goods, rendering services, or other activities that constitute the MNE group's ordinary activities'.

The revenue amounts should be determined in line with the relevant accounting standard, which may allow netting for discounts, returns and allowances, but in any event before deducting cost of sales and other operating expenses. In addition, revenue should include net gains from investments (whether realized or unrealized) reflected in the profit and loss statement of the consolidated financial statements and income or gains separately presented as extraordinary or non-recurring items. If the MNE group's consolidated profit and loss statement presents gross gains from investments and gross losses from investments separately, the MNE group shall reduce revenues by the amount of such gross losses to the extent of gross gains from investments in determining revenues. This is to ensure that an MNE group is not disadvantaged by a financial accounting standard that requires gains and losses to be presented separately in the profit and loss statement.

The 2024 Tax Law Amendment Proposal provides that the detailed methodologies for determining consolidated revenue will be prescribed by the LCITA PD, and it is expected that the LCITA PD will adopt the above methodologies provided in the OECD Administrative Guidance published in December 2023. The proposed amendment is effective for filings made on or after January 1, 2025.

(4) Detailed methodologies for determining whether the deferred tax liability ("DTL") accruals have reversed to be prescribed by PD (LCITA §67(3))

Under the OECD GloBE Model Rules and the Korean GloBE rules in the LCITA, the accrual of a DTL that is claimed in the adjusted covered taxes for the relevant fiscal year should be subject to recapture if it does not reverse within the subsequent 5 years. This DTL recapture means that the adjusted covered taxes and the effective tax rate for the fiscal year in which the DTL was accrued and claimed should be re-computed without such DTL, and if the re-computed effective tax rate is below the minimum rate, an additional top-up tax is computed for that fiscal year.

The OCED Administrative Guidance published in June 2024 provides that, for purposes of the DTL recapture rule, a constituent entity can track its DTLs according to three possible approaches: (i) on an item-by-item basis where DTLs related to each single asset or liability are tracked individually, (ii) on a general ledger account ("**GL account**") basis where DTLs related to all the assets or liabilities encompassed in a GL account are grouped and tracked as a single DTL category, or (iii) on an aggregate DTL category basis where a category of DTLs determined in relation to two or more GL accounts that fall under the same balance sheet account or sub-balance sheet account are grouped and tracked as a single DTL category.

The 2024 Tax Law Amendment Proposal provides that the detailed methodologies for DTL recapture will be prescribed by the LCITA PD, and it is expected that the LCITA PD will adopt the methodologies provided in the OECD Administrative Guidance published in June 2024. The proposed amendment is effective for filings made on or after January 1, 2025.

(5) Special provision for GloBE loss election (LCITA §67(4) and (5) newly introduced)

The OECD GloBE Model Rules include an elective rule to effectively carry GloBE losses forward with a deemed deferred tax asset ("**DTA**") (net GloBE loss for a jurisdiction x 15%). This GloBE loss DTA may be carried forward and used in any subsequent fiscal year in which there is GloBE income for the jurisdiction.

Currently, the LCITA does not include any provision on GloBE loss election. The 2024 Tax Law Amendment Proposal introduces a special provision for GloBE loss election and the details will be prescribed by the LCITA PD. The proposed amendment is effective for filings made on or after January 1, 2025.

(6) Improving the methodologies for allocating the UTPR top-up tax amount to constituent entities (LCITA §73(5))

The UTPR top-up tax amount is allocated among UTPR jurisdictions by applying their respective UTPR percentages, and subsequently allocated among the constituent entities within the relevant UTPR jurisdiction. Under the current LCITA, the allocation of the UTPR top-up tax amount among the constituent entities can be based on (i) the statutory method which takes into account the parent entity's direct or indirectly ownership interests, or (ii) a methodology agreed upon by all constituent entities.

The 2024 Tax Law Amendment Proposal provides that, if an MNE group elects to use an methodology agreed upon by all constituent entities and fails to pay any UTPR top-up tax, (i) the unpaid UTPR top-up tax will be allocated to the ultimate parent entity if the ultimate parent entity is located in Korea, or (ii) the statutory method will apply if the ultimate parent entity is not located in Korea. This proposed amendment is not included in the OECD Model Rules, Commentaries or Administrative Guidance, but seems to have been introduced to clarify the entity responsible for paying any unpaid top-up tax under the UTPR. The proposed amendment is effective for filings made on or after January 1, 2025.

(7) Detailed methodologies for determining the status of a flow-through entity as a tax transparent entity or reverse hybrid entity by reference to the owner to be prescribed by the LCITA PD (LCITA §79(1))

A flow-through entity (i.e. entity that is fiscally transparent in the jurisdiction where the entity is created) is treated as fiscally transparent in the jurisdiction of an owner (i.e. it is a tax transparent entity) if the owner is taxed on its share of the flow-through entity's profits. On the other hand, a flow-through entity is not treated as fiscally transparent in the jurisdiction of an owner (i.e. it is a reverse hybrid entity) if the owner is not taxed on its share of the flow-through entity's profits.

However, there were some uncertainty over the classification of a flow-through entity as a tax transparent entity vs reverse hybrid entity when it is held directly by another flow-through entity. The OECD Administrative Guidance published in June 2024 provides that the status of a flow-through entity as a tax transparent entity or reverse hybrid entity should generally be determined by reference to the tax law of the constituent entity-owner closest to such entity in the ownership chain that is not itself a flow-through entity.

The 2024 Tax Law Amendment Proposal provides that the detailed criteria for the owners of ownership interests in flow-through entities will be prescribed by the LCITA PD, and it is expected that the LCITA PD will adopt the details provided in the OECD Administrative Guidance published in June 2024. The proposed amendment is effective for filings made on or after January 1, 2025.

Related Areas

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