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Global Tax Alert

Korea enacts 2021 tax reform bill

EY Tax News Update: Global Edition

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Executive summary

On 22 December 2020 and 29 December 2020,[1] Korea enacted the 2021 tax reform bill (the 2021 Tax Reform) after it was passed by Korea's National Assembly on 2 December 2020. Unless otherwise specified, the 2021 Tax Reform will generally become effective for fiscal years beginning on or after 1 January 2021. The Enforcement Decrees, which provide more guidance on the laws, are expected to be enacted in February 2021.

This Alert summarizes the key features of the new and amended tax laws.

Detailed discussion

Extension of the relief period for net operating losses (NOLs)

The 2021 Tax Reform extends the NOL carryforward period from 10 years to 15 years. This rule applies to NOLs reported on or after 1 January 2021.

Changes in foreign tax credit regime

The 2021 Tax Reform repeals the deduction method in the foreign tax credit regime. However, foreign tax payments may still be claimed as a tax deduction (the deduction method) if a foreign tax credit is not claimed.[2] In addition, the carryforward period for excess foreign tax credits is extended from 5 years to 10 years.

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These amended rules will be effective for fiscal years beginning on or after 1 January 2021.

Reduction of securities transaction tax (STT)

Reduced STT rates apply to securities transactions occurring on or after 1 January 2021. The implemented STT rates are as follows:

Stock exchange	STT rate (1 January 2021 - 31 December 2022)	STT rate (1 January 2023 onwards)
KOSPI Market[3]	0.08%	0%
KOSDAQ Market	0.23%	0.15%
KONEX Market	0.1%	0.1%
Other	0.43%	0.35%

Taxation on the disposal of virtual assets[4]

The 2021 Tax Reform provides a capital gains tax regime for the disposal of virtual assets. Gains derived from the disposal of virtual assets by a foreign individual or foreign corporation are categorized as "other income" subject to withholding tax at the lesser of 11% of the transfer price or 22% of the net capital gains. This rule applies to transactions occurring after 1 January 2022.

Extension of the rollback period for Advance Pricing Agreements (APAs)

The rollback period for APAs is extended under the 2021 Tax Reform. For bilateral APAs, the rollback period is extended from five to seven years, while for unilateral APAs, the rollback period is extended from three to five years. This treatment applies to APA applications filed on or after 1 January 2021.

Amendment to transfer pricing (TP) forms and documentation

For taxpayers that are required to file the master file and local file, the 2021 Tax Reform removes the requirement for taxpayers to file the TP waiver form that was previously required to submit for waiver of the submission of the Summary of International Transactions and Declaration of Transfer Pricing Methods (TP disclosure forms).

In addition, the filing period for the TP documentation has been changed as summarized below.

<table>
<tr><th>TP documentation</th><th>Law for the Coordination of International Tax Affairs</th><th>The 2021 Tax Reform</th></tr>
<tr><td>▸ Summary of International Transactions
▸ Summary of Income Statements</td><td>By the statutory due date of the corporate income tax return</td><td>Within six months from the fiscal year end</td></tr>
<tr><td>▸ Master file and local file</td><td>Within 12 months from the fiscal year end</td><td rowspan="2">Within 12 months from the next day of the fiscal year end</td></tr>
<tr><td>▸ APA annual report</td><td>Within six months from the next day of the statutory due date of the Corporate Income tax return</td></tr>
</table>

This change applies to submissions of TP documentation on or after 1 January 2021.

Payment statement non-filing penalties introduced for foreign entities

Under the 2021 Tax Reform, foreign payers (including a permanent establishment of a foreign entity) as well as domestic payers of Korean-sourced income are subject to penalties for non-compliance with the submission of withholding payment statements (required to be submitted on or before the end of February following the year in which such withholding is made).

This rule applies to filing obligations for the payment of a transfer consideration paid on or after 1 January 2021.

Changes to the calculation of interest for refunds of national taxes

The current Corporate Income Tax Law provides that when the tax authority pays a national tax refund, the interest is required to be paid for the period from the date that the refund claim was requested, and the day of the appropriation or decision on the payment.

The 2021 Tax Reform changes the date of commencement of the interest accrual from the date on which tax refund claim is requested to the date on which the national tax is paid. This rule applies to payments or appropriations of tax refunds after the enactment of the Enforcement Decree of the Basic National Tax Law.[5]

Endnotes

1. The reduction of Securities Transaction Tax rates was enacted on 22 December 2020 and 29 December 2020. All other measures discussed in this Global Tax Alert were enacted on 22 December 2020.
2. This is an amendment to the Enforcement Decree which is expected to be approved in February 2021.
3. Agricultural and fishery community special tax rate equal to 0.15% would also be imposed in addition to STT.
4. Virtual asset means an electronic certificate having economic value (including any rights thereof) that can be traded or transferred electronically.
5. This is an amendment to the Enforcement Decree which is expected to be approved in February 2021.

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