22 May 2019
Global Tax Alert

Korea issues tax ruling clarifying interest withholding tax exemption on foreign currency denominated bonds

Executive summary

Korea's National Tax Service (the NTS) issued a tax ruling (the Ruling)[1] clarifying the conditions under which interest on foreign currency denominated bonds (FX bonds) can be exempt from withholding tax, if the FX bonds meet the overseas issuance criteria. The NTS ruled that the term "overseas issuance" would mean a series of actions related to FX bonds issuance that occurred overseas.

Detailed discussion

Under the Korean tax law, interest on FX bonds is exempt from Korean withholding tax if issued by the Korean Government, local government or domestic corporations and the FX bonds are issued overseas.

The taxpayer, a Korean corporation, was contemplating the raising of operating funds through the issuance of FX bonds. The taxpayer requested a tax ruling from the NTS to determine whether the FX bonds would be viewed as issued overseas if major activities including subscription for the issuance of the FX bonds and underwriting of the FX bonds were undertaken overseas.

The NTS ruled that interest on the taxpayer's FX bonds would be exempt from Korean withholding tax when received by the foreign bond holders, since the bond issuance activities to be undertaken by the taxpayer would meet the overseas issuance criteria. Under the Ruling, the term "overseas issuance" would apply to FX bonds when the investor of the FX bonds is a nonresident or foreign corporation (excluding a foreign corporation having a permanent establishment in Korea) and the series of activities associated with the issuance of the FX bonds, such as registration and approval of investment, payment process, investment offering, investor attraction, private placement, transfer, underwriting, subscription offering, contract conclusion, among others, take place overseas.

Endnotes

1. The ruling was issued on 11 March 2019.

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