Tax Law Changes for 2016

In December of 2015, the Korean National Assembly passed, and the government promulgated, amendments to the tax laws, and the amendments generally took effect as of January 1st, 2016 (though different effective dates have been specified in some cases). Amendments to the corresponding Presidential Decrees were also proposed in December of 2015. Following procedures for public notification and rulemaking, the approved amendments to the Presidential Decrees are expected to be promulgated on February 5th, 2016 (with the exception of the Presidential Decrees issued under the local tax laws, which were promulgated at the end of December of 2015). We provide below a summary of some of the significant amendments that may affect your business or be of interest to you.

Please note that this is only a brief outline of select amendments. If you wish to discuss any of the below items in more detail or have concerns that other amendments not addressed herein may have a bearing on your business, please feel free to contact us.

Abbreviations

CITL	Corporate Income Tax Law
IITL	Individual Income Tax Law
ITCL	International Tax Coordination Law
NTBL	National Tax Basic Law
STTCL	Special Tax Treatment Control Law
VATL	Value Added Tax Law
LTBL	Local Tax Basic Law
LTL	Local Tax Law
LTSTCL	Local Tax Special Treatment Control Law
***-PD**	*-Presidential Decree
***-MD**	*-Ministerial Decree

I. International Tax

1. Multinational enterprises ("MNEs") to be required to file comprehensive report on international transactions *[Article 11, 12(1) of the ITCL, Article 21-2, 51(1) of the ITCL-PD]*

New Amendment
In line with the current OECD BEPS recommendations, a new comprehensive report on international transactions ("Comprehensive Report") will be required to be submitted together with corporate tax returns. This new report, which will be in addition to the summary of international transactions already required, will cover controlled transactions and provide key information on the business operations of MNEs.

Based on the proposed amendment to the ITCL-PD, the detailed requirements relating to the filing of this Comprehensive Report are as follows:

(a) Content of Comprehensive Report:

(i) Local file: description of the local entity (organizational structure, business, etc.), financial information, and transfer pricing information on local entity's primary controlled transactions
(ii) Master file: MNE's group structure, business, intangibles, financial activities and tax positions

(b) Affected Taxpayers: all Korean companies and permanent establishments ("PEs") of foreign companies with annual revenue of more than KRW 100 billion and annual international related party transactions of more than KRW 50 billion

(c) Filing responsibility:

(i) Local file: local taxpayer
(ii) Master file: ultimate parent company of business group to which the local taxpayer belongs. If such ultimate parent company is not in Korea, the master file is to be filed via the local taxpayer.

(d) Forms and procedures:
(i) Comprehensive Report should be filed with district tax office having jurisdiction over the local taxpayer (may be filed electronically).
(ii) Language:
- Local file: Korean
- Master file: Korean or English (on the condition that a Korean translation will be provided within 1 month)

(iii) Update of Comprehensive Report is required annually (though certain recurring items to be designated by Ministerial Decree may be updated every 3 years)

(e) Due date: same as tax return due date (may be extended up to one year upon approval due to unavoidable circumstances)

(f) Penalty for failure to file or incorrect filing: KRW 30 million

Applicable from fiscal years commencing on or after January 1, 2016.

2. Simplified document submission requirements for APA applications *[Article 9(1) of the ITCL-PD]*

Before Amendment	After Amendment
Documents required to be submitted for APA application: 4 copies of the following documents in relation to	Under the proposed amendment to the ITCL-PD, the documentation requirements for an APA application have been simplified, as follows:

international related party transactions (a) APA application form (b) Details of business, organizational structure and shareholdings of the transaction parties (c) Financial statements, tax returns, etc. of the transaction parties for the last 3 years (d) Documents detailing the determination of the arm's length price (benchmark study, etc.)	Only 2 copies of documents pertaining to international related party transactions (the same documents as set forth in the left hand column); and The documents described in (d) in the left hand column (i.e., documents detailing the determination of the arm's length price) may be submitted electronically. Applicable for APA applications filed on or after the promulgation of the revised ITCL-PD.

3. New tax withholding obligations introduced for high income secondees *[Article 156-7 of the IITL, Article 207-10 of the IITL-PD]*

New Amendment

In an effort to ensure greater individual income tax compliance for high-income expatriates seconded by foreign companies to Korean companies, a new 17% (18.7% inclusive of local income tax) withholding tax has been introduced on payments made by a Korean host company to a foreign company seconding expatriates. (For this purpose, where the actual amount paid to the secondee is known, the withholding tax should be based on such actual payment.)

The seconding foreign company will be required to file an annual income tax reconciliation on behalf of each secondee by February of the following calendar year to pay any tax shortfall or claim a refund for any taxes overpaid. (This may be undertaken by the Korean host company as agent for the seconding foreign company.)

The proposed amendments to the IITL-PD set forth the withholding threshold and detailed compliance requirements, as follows:

(a) Withholding agent: Korean host companies meeting all of the following criteria:

  (i) Withholding threshold: KRW 3 billion or more in annual payments to foreign company seconding personnel to Korean host company for services provided by such secondees (Based on a ministry press release, the threshold is calculated on an aggregate basis if such payments are made to more than one foreign company.)
  (ii) Company size: prior year revenue of at least KRW 150 billion or assets of at least KRW 500 billion
  (iii) Primary business: air transportation, construction, or professional, scientific & technical services (based Korean Standard Industrial Classifications)

(b) Foreign company engaged in dispatching personnel to Korean host company should not have a permanent establishment in Korea and should be primarily engaged in the secondment of personnel

to host companies.

(c) Withholding tax and annual income tax reconciliation procedures:

(i) Withholding: Korean host company is required to withhold income tax upon payment of service fees. The taxes withheld should then be remitted to the tax office together with withholding tax return and copy of the service agreement between the Korean host company and seconding foreign company.

(ii) Annual income tax reconciliation: the seconding foreign company is required to pay any tax shortfall or claim a refund of any overpaid taxes through the annual income tax reconciliation process (which may be undertaken by the Korean host company as agent for the seconding foreign company). In this regard, secondee salary statements, a copy of the agreement between the seconding foreign company and the secondee, and documents evidencing salary payments made by the seconding foreign company to the secondee should be submitted at the time of filing the annual income tax reconciliation.

The new withholding tax rule will apply to payments made by Korean host companies on or after July 1, 2016.

4. "Real estate-rich" company rules revised to include shares in other "real estate-rich" companies *[Article 119(9) of the IITL, Article 179(9) of the IITL-PD, Article 93(7) of the CITL, Article 132(12) of the CITL-PD]*

Before Amendment	After Amendment
When a non-resident individual or foreign company sells shares in a Korean company, such sale is taxed as the sale of real estate where 50% or more of the Korean company's assets consist of real estate ("real estate-rich" company).	The "real estate-rich" company rules were changed for Korean resident individuals in February of 2015 such that the value of shares in other real estate-rich companies is treated as real estate in calculating the 50% threshold, and the tax law has recently been revised to apply the same rules to non-resident individuals and foreign companies. Under the proposed amendments to the IITL-PD and CITL-PD, for purposes of determining whether the 50% "real estate-rich" company threshold is exceeded, the value of shares in any other real estate-rich companies held by the tested company will be treated as real estate in the same ratio as the value of real estate owned by such other real estate-rich companies bears to their total assets. Applicable for share transfers taking place on or after January 1, 2016.

5. The right of financial institutions to obtain financial account information expanded to comply with automatic exchange of information agreement *[Article 31 of the ITCL]*

New Amendment
Currently, financial institutions are required to obtain and provide financial account information requested by the tax office to enable the tax office to fulfill obligations under currently effective automatic exchange of information agreements. In order to enable financial institutions to comply with these requests, financial institutions may request and verify certain personal information, such as country of residence, taxpayer identification number and other personal details of financial account holders with or without specific requests by the tax office. Applicable for financial information to be verified on or after January 1, 2016.

6. Duty of confidentiality requirements expanded for financial account information *[Article 31-3 of the ITCL]*

New Amendment
Currently, persons with access to financial account information obtained by their companies are prohibited from supplying, using or soliciting such information for any purpose other than complying with exchange of information obligations under a tax treaty or automatic exchange of information agreement and are subject to prosecution or criminal fines for breach of such duty of confidentiality. In order to further protect confidential financial account information, companies will also be subject to criminal fines when their employees or agents are found to have breached their duty of confidentiality with respect to financial account information. As an exception, the criminal fines may be waived where the companies have been diligent in ensuring compliance with their duty of confidentiality. Applicable to confidentiality breaches taking place on or after January 1, 2016.

7. Procedural change to further facilitate automatic exchange of financial account information *[Article 47(6) of the ITCL-PD]*

Before Amendment	After Amendment
For the purpose of automatic exchange of financial account information with treaty counterparties, financial account information of certain taxpayers is required to be reported to the tax office as follows:	In order to further facilitate the exchange of financial account information with treaty counterparties, the following changes in the procedures for submission of financial account information have been proposed as amendments to the ITCL-PD.
• Reporting unit: branch of financial institution • Due date: within 6 months of request	• Reporting unit: financial institution as a whole • Due date: within 3 months of request

	Applicable to financial account information submitted on or after the promulgation date of the revised ITCL-PD.

II. Tax Exemption for Foreign Direct Investment

1. Tax exemption limit revised to encourage employment of disadvantaged groups *[Article 121-2(14) of the STTCL]*

Before Amendment	After Amendment
The tax exemption limit for qualified foreign direct investments is calculated as the sum of the following: (a) Investment • 7 year tax exemption: foreign investment amount X 70% • 5 year tax exemption: foreign investment amount X 50% (b) Employment • Lower of foreign investment amount x 20% and the sum of the following amounts: (i) Specialized vocational high school graduates: KRW 20 million per person (ii) Young employees, disabled employees, employees who have reached the age of 60: KRW 15 million per person (iii) Other: KRW 10 million per person	To encourage employment of disadvantaged groups by foreign invested companies, the employment component of the foreign investment tax exemption limit has been increased while the investment component has been decreased: (a) Investment • 7 year tax exemption: foreign investment amount X 50% • 5 year tax exemption: foreign investment amount X 40% (b) Employment • Lower of foreign investment amount x 40% (30% for 5 year exemption) and the sum of the following amounts: (No Change) Applicable to tax exemption applications filed on or after January 1, 2016 and tax exemption applications filed before January 1, 2016 if the initial investment has not been made as of December 31, 2015.

2. Tax Incentives for foreign direct investment to commence no later than five years after approval *[Article 121-2(13) of the STTCL]*

Before Amendment	After Amendment

Tax exemption is rescinded if capital contribution is not made within 3 years of the date upon which the tax exemption is approved.	Where a capital contribution has been made (i.e., within 3 years of tax exemption approval as required) but the business has not commenced within 5 years of the exemption approval date, the foreign invested company will be deemed to have commenced business 5 years after the receipt of tax exemption approval. Since the tax exemption period begins 5 years after the business commences or the date upon which income is first realized (whichever comes first), the amendment may reduce the number of years in which taxpayers may benefit from approved tax exemptions in the event the business commences after the five year grace period. Applicable to tax exemption applications filed on or after January 1, 2016.

3. Foreign direct investment tax incentives further limited for indirect investments by Korean companies or nationals *[Article 121-2(11) of the STTCL]*

Before Amendment	After Amendment
In order to prevent a Korean company or national (excluding a permanent resident in a foreign country) from taking advantage of the tax exemption benefits intended for foreign investors by indirectly investing in Korea through a foreign entity, tax exemptions are denied in the following cases. • Equity investments: Where a Korean company owns (directly or indirectly) 10% or more of the voting shares of the foreign investor making a direct investment into Korea, the tax exemption is denied for the portion of such investment corresponding to the Korean company's shareholding percentage in the foreign investor.	The restrictions on indirect investments by a Korean company or national have been reinforced, as follows: • Equity investments: The current 10% voting share threshold has been reduced to 5%, and the limitations will also apply going forward even when less than 5% is owned, to the extent the Korean company or national (as a shareholder of the foreign investor) appoints the representative director or the majority of the directors of the foreign investor independently or based on an agreement with the other shareholders. The tax exemption will be denied for the portion of the investment corresponding to such Korean

Before Amendment	After Amendment
	company or national's shareholding percentage in the foreign investor. (5% is applied if the ownership percentage is less than 5%)
• Loan arrangement: Where (i) the foreign invested company or (ii) a Korean company or national that owns 10% or more equity in the foreign invested company provides a loan to the foreign shareholder of the foreign invested company, the tax exemption is denied in proportion to the amount of such loan.	• Loan arrangement: The 10% threshold in the existing rule has been reduced to 5%, and the following new, additional restriction has been added. Where a Korean company or national extends a loan to a foreign invested company's shareholder(s), and the Korean company or national (as a shareholder of the foreign invested company) appoints the representative director or the majority of the directors of such foreign invested company independently or based on an agreement with the other shareholders, the foreign direct investment incentives will be reduced by the amount of such loan. Applicable to fiscal years commencing on or after January 1, 2016.

III. Finance Tax

1. Withholding obligations clarified for bond repo/lending transactions *[Article 114-2(1), (2), 138-3(2), (3) of the CITL-PD, Articles 102(4), (5), 207-3(3), (4) of the IITL-PD]*

Before Amendment	After Amendment
If a bond is transferred before a coupon payment date, the seller will be subject to withholding tax at the time of such transfer for the portion of interest accrued while the bond was held by the seller, and when the coupon is paid, the purchaser will be subject to withholding tax for the portion of interest accrued while the purchaser held the bond. However, a qualified bond repo or bond lending transaction (as described below) is not treated as a transfer for withholding tax purposes, and therefore, there is no withholding tax at the time of transfer.	In order to invigorate the bond market and provide greater certainty to taxpayers, proposed amendments to the CITL-PD and IITL-PD clarify that qualified bond repo or lending transactions eligible for a withholding tax exemption include: Consecutive combinations of bond repo and/or lending transactions intermediated and confirmed by the KSD, such as (i) two or more consecutive repo transactions, (ii) two or more consecutive lending transactions, and (iii) any consecutive

Thus, the full amount of the coupon received from the issuer by the repo purchaser or borrower (which is subsequently paid to the repo seller or lender as manufactured interest for the period of the repo/lending transaction) will be treated as interest income in the hands of the repo seller or lender. Qualified bond repo or bond lending transactions include: (a) Bond repo transactions intermediated and confirmed by the Korea Securities Depository ("KSD") (b) Bond lending transactions intermediated and confirmed by the KSD	combination of repo and lending transactions. Applicable to bond repo or lending transactions occurring on or after the promulgation of the revised CITL-PD and IITL-PD.

2. Taxable period changed for education tax *[Articles 8, 8-2, 9 of the Education Tax Law]*

Before Amendment	After Amendment
Financial institutions are liable for education tax on a calendar quarter basis. In calculating the education tax base for a quarter, gains and losses from foreign exchange and foreign currency derivative transactions taking place during the quarter are netted against each other such that only the net gain is subject to education tax. However, where the gains and losses arise in different quarters, losses arising in a preceding quarter cannot be carried forward to the following quarter to be offset against any gains arising in the following quarter. As a result, imposition of education tax based on a quarterly taxable period can give rise to an inequitable tax outcome compared to the imposition of tax based on an annual taxable period, as is normally the case for corporate income tax purposes.	To alleviate the potential for inequitable tax outcomes arising from the imposition of education tax based on a quarterly taxable period, the taxable period for education tax purposes has been changed to coincide with the taxable period adopted for corporate income tax purposes. However, in order to stabilize education tax collections, a quarterly interim education tax will be payable based on the education tax liability for the preceding taxable period (e.g., assuming a 12 month taxable period, interim taxes are payable within two months after the end of each of the first three quarters in an amount equal to one fourth (1/4) of the preceding period's education tax liability). Applies to taxable periods commencing on or after December 29, 2015.

3. Tax exemptions reintroduced for distributions from domestic funds investing in foreign equities *[Article 91-17 of the STTCL, Article 93-3 of the STTCL-PD]*

New Amendment
As part of a wider measure to encourage overseas investment and balance foreign exchange flows, a tax exemption has been reintroduced for Korean resident investors in domestic funds investing in listed foreign shares, as follows: (a) Tax exemption criteria: (i) Applies to investments in qualifying funds made through a fund savings account specialized in foreign equities with a term of 10 years or less (ii) Qualifying funds: domestic funds that have directly or indirectly (through an offshore fund registered in Korea) invested 60% or more in listed foreign shares. According to the proposed amendment to the STTCL-PD, listed foreign shares refer to shares issued by a foreign company (other than a collective investment vehicle) which are listed on an overseas stock exchange and include depository receipts ("DR") relating to foreign listed shares (provided such DR are traded on an overseas stock exchange). (iii) The 60% threshold must be maintained on a daily basis subject to certain exceptions. (iv) Fund investment period: January 1, 2016 ~ December 31, 2017 (v) Tax exemption period: 10 years from the date a fund savings account specialized in foreign equities was opened (vi) Investment limit: KRW 30 million per investor, subject to certain rules relating to reinvestments and redemptions (b) Scope of exemption: Distributions from domestic funds attributable to capital gains, valuation gains and foreign exchange gains arising from listed foreign shares are exempt from tax in the hands of individuals residing in Korea. Applicable to investments in qualifying funds made on or after the date on which the revised STTCL-PD is promulgated.

4. Tax deferral to be provided for distributions of capital gains by "qualifying funds" *[Article 26-2 of the IITL-PD]*

Before Amendment	After Amendment
Distributions from "qualifying funds" are taxed as dividends in the hands of investors. A qualifying fund is a fund established under the Financial Investment Services & Capital Markets Act ("FISCMA") that distributes profits at least once a year. As an exception to the distribution requirement, a	Under the proposed amendment to the IITL-PD, in order to smooth out fluctuations in investment performance from year to year and ensure only net gains accruing to the investors during the life of the fund investment are taxed, capital gains from the sale of fund assets may also be deferred until investments in the fund are redeemed. However, interest, dividends and other income

fund may defer the distribution of valuation gains until such gains are actually realized.	arising from fund assets cannot be deferred and must be distributed annually. Applicable to distributions made on or after the date on which the revised IITL-PD is promulgated.

5. Capital gains tax rate reduced for derivative transactions *[Article 104(1) of the IITL, Article 167-9 of the IITL-PD]*

Before Amendment	After Amendment
The 20% standard capital gains tax rate applicable to gains derived by resident individuals on the transfer of KOSPI 200 Futures and KOSPI 200 Options may be reduced by up to 50%, resulting in a current net capital gain tax rate of 10%.	In order to allow for greater flexibility in responding to changing circumstances in the derivatives market, the 20% standard capital gains tax rate can now be reduced by up to 75%. In line with this revision, the proposed amendment to the IITL-PD will reduce the prevailing capital gains tax rate from the current 10% to 5%. Applicable to transfers taking place in the fiscal year in which the revised IITL-PD is promulgated.

6. Securities Transaction Tax ("STT") exemption expanded to cover additional market makers *[Article 117(1) of the STTCL, Article 115 of the STTCL-PD]*

Before Amendment	After Amendment
Until December 31, 2017, market makers that have contracted with the KRX to provide liquidity in the share futures and options exchange are exempt from the STT on the trading of the underlying shares when hedging share futures and options.	To reinvigorate the index futures and options exchange as well as the stock exchange, the STT exemption has been expanded to cover (a) market makers in the index futures and options exchange trading underlying shares to hedge index futures and options, and (b) market makers in the KRX. Under the proposed amendment to the STTCL-PD, market makers will be defined as follows for this purpose. (a) Market makers in the index futures and options exchange: securities companies which have executed a market making contract with the KRX pursuant to the derivatives market

	regulations (b) Market makers in the KRX: securities companies which have executed a market making contract with the KRX pursuant to the securities market regulations Applicable for transfers made on or after January 1, 2016.

IV. Corporate Tax (Non-Finance)

1. New deductibility criteria prescribed for automobile expenses *[Article 50-2 of the CITL-PD and Article 78-3 of the IITL-PD]*

Newly Proposed

Based on recent revisions to the tax laws, the deductibility of certain passenger vehicle expenses is limited, with the excess being deemed as non-business related. Further details on the operation of these new rules have been announced in the proposed amendments to the CITL-PD, which are set out below.

(a) Excluded passenger vehicles:

Passenger vehicles directly used to produce income for certain businesses are excluded from the new deductibility criteria (e.g., passenger vehicles used by leasing companies or transportation companies).

(b) Expenses subject to the new rules:

Expenses incurred in acquiring and maintaining passenger vehicles, including depreciation, lease payments, fuel, repairs, insurance, taxes and interest expenses on finance leases

(c) Calculation of the deductible portion:

- An "employee-use only" automobile insurance policy is required in order to deduct any of the expenses listed in (b) above. In order to maximize eligible deductions, a travel log is also recommended for each vehicle to substantiate the business-use percentage (calculated as a proportion of mileage travelled for business over total mileage). An "employee-use only" automobile insurance policy is an insurance policy that insures the vehicle only where it is used by a director or an employee of a company for the company's business and includes existing automobile insurance policies that are renewed for "employee-use only" on or after April 1, 2016.

- The following table outlines the methodology used to calculate the deductible portion of passenger vehicle related expenses under the new rules.

Conditions	Deductible portion of automobile expenses
Employee-use only automobile insurance policy does not exit	Nil
Employee-use only automobile insurance policy exists but a travel log is not maintained	Up to KRW 10 million per year
Employee-use only automobile insurance policy exists and a travel log is maintained	Actual expenses x business-use percentage as substantiated by the travel log

(d) Limit on deductibility of depreciation expenses and loss on disposal:

In addition to the overall limitation on the deductibility of vehicle expenses, the per vehicle cap for business-use depreciation expenses is KRW 8 million per year, with any excess carried forward to subsequent years

- The base amount of deductible depreciation subject to the KRW 8 million limit is calculated as follows:
  - Depreciation x business-use percentage as substantiated by travel log
  - Where a travel log is not maintained, the business-use percentage will be 100% if the total vehicle related expenses are KRW 10 million or less. Where the total vehicle related expenses exceed KRW 10 million, the business-use percentage is calculated by dividing KRW 10 million by the total vehicle related expenses.
- Where the vehicle is leased, a portion of the lease payment (excluding insurance and taxes) will be deemed as depreciation subject to the KRW 8 million limit.
- Any deductible depreciation in excess of the annual limit may be carried forward and deducted in subsequent years when the depreciation for that year is less than KRW 8 million.
- Any loss on disposal of a passenger vehicle is also subject to the annual KRW 8 million deductibility limit.
- If the lease period expires or the vehicle is disposed of, any excess depreciation or loss on disposal carried forward may be deducted at KRW 8 million per year beginning the following fiscal year, with any balance remaining on the 10th anniversary of expiry of the lease period or disposal being deductible outright in that fiscal year.

The proposed rules will be effective for vehicle expenses incurred in fiscal years commencing on or after January 1, 2016.

2. Non-deductible automobile expenses to be taxed as dividends or bonuses *[Article 106 of the CITL-PD]*

Before Amendment	After Amendment
Non-deductible expenses are reclassified as either a dividend (if attributed to a shareholder), bonus (if attributed to a director or employee) or bonus to the	Under the proposed amendment, the non-deductible portion of passenger vehicle expenses will also be recharacterized as a dividend or bonus

Before Amendment	After Amendment
representative director (if the identity of the person to whom the expenses are attributable is not certain). These deemed dividends or bonuses are subject to tax.	subject to tax. The proposed amendment will apply to fiscal years commencing on or after January 1, 2016.

3. Compulsory depreciation method prescribed for passenger vehicles *[Article 50-2(2) of the CITL-PD and Article 78-3(2) of the IITL-PD]*

Before Amendment	After Amendment
Taxpayers may depreciate passenger vehicles using either the straight-line or diminishing value method, based on a 4-6 year useful life.	Under the proposed amendment, passenger vehicles must be depreciated using the straight-line method assuming a useful life of 5 years. The proposed amendment will apply to passenger vehicles acquired in fiscal years commencing on or after January 1, 2016.

4. Scope of companies excluded from new limit on utilization of NOL carryforwards *[Article 13 of the CITL and Article 10 of the CITL-PD]*

Newly Proposed
Under the current CITL, net operating losses (“NOLs”) may be carried forward for 10 years and fully deducted against taxable income in subsequent years. Under the revised CITL, the 10 year carryforward period remains in place, but the amount of NOL carryforward that can be deducted in any given year is limited to 80% of taxable income for such year. The new limit will apply to all companies other than small and medium-sized enterprises and certain companies designated by the CITL-PD. Under the proposed amendment to the CITL-PD, the new limit will not apply to the following companies: • Companies undergoing court rehabilitation procedures • Companies undergoing a normalization plan under the Corporate Restructuring Promotion Law • Companies undergoing a normalization plan under an agreement with a financial institution • ABS-SPC established on or before December 31, 2015 However, Korean branches of foreign corporations are not subject to the above new rules. The new rules will apply for fiscal years beginning on or after January 1, 2016.

5. Greater flexibility to be permitted in the allocation of joint business expenses between related parties *[Article 48(1) of the CITL-PD]*

Before Amendment	After Amendment
Expenses incurred in a joint business conducted by related parties may be allocated between the related parties based on the relative amounts of their prior year or current year revenue. If no method is elected, an allocation based on prior year revenue is deemed to be chosen. The chosen method must be applied for the next 5 years.	Under the proposed amendment, joint business expenses may be allocated between related parties based on the relative amounts of one of the following. (a) prior year gross assets (b) current year gross assets (c) prior year revenue (d) current year revenue As was previously the case, an allocation based on prior year revenue is deemed to be chosen if no election is made, and the method elected (or deemed to be elected) must be applied for the next 5 years. The proposed amendment will apply from the fiscal year in which the revised CITL-PD is promulgated.

6. Excess retained earnings tax further reduced for increasing wages of young workers *[Article 93(9) of the CITL-PD]*

Before Amendment	After Amendment
Under the excess retained earning tax ("ERET") regime introduced in 2014, a taxpayer subject to the ERET may elect one of the methods below to calculate any ERET payable: (a) [Current year taxable income × 80% - (investment + wage increase + dividend payout)] × 10% (b) [Current year taxable income × 30% - (wage increase + dividend payout)] × 10%	To encourage the employment of young workers (workers aged 15~29), in calculating the ERET, a greater weight of 150% will be applied to wage increases for full time young workers. Accordingly, the "wage increase" component of both of the two alternative ERET calculation methods will consist of the sum of (i) 150% of wage increase attributable to full-time young workers and (ii) 100% of all other wage increases. The proposed amendment will apply to tax returns filed on or after the promulgation of the revised CITL-PD.

7. Employment tax credit for "young workers" introduced *[Article 29-5 of the STTCL and Article 26-5 of the STTCL-PD]*

Newly Proposed

The proposed employment tax credit for young workers announced in August of 2015 was slightly revised in the final revised legislation promulgated on December 15, 2015. Under the final revised legislation, the tax credit for increasing the total number of regular young workers employed over the prior year is KRW 2 million / person for large companies (previously announced as KRW 2.5 million / person) while the tax credit of KRW 5 million / person for other companies remains the same. The increase in the number of regular young workers based on which the total tax credit is calculated is capped at the lower of (i) the increase in the total number of regular workers and (ii) the increase in the number of full time workers.

In addition, the proposed amendment to the STTCL-PD contains the following detailed rules.

(a) Industries ineligible for the employment tax credit:

Certain service providers in the consumptive service industry, such as bars, karaoke bars, hotels and motels (excluding tourist accommodations) are ineligible for the employment tax credit.

(b) Scope of regular workers, regular young workers, full time workers and calculation of number of workers:

Regular worker	An individual worker who has signed a labor service agreement other than: - short term or part time worker - seconded worker - director - majority shareholder and such shareholder's relatives
Regular young worker	A regular worker aged 15~29 as of relevant month end
Full time worker	An individual worker who has signed a labor service agreement other than: - worker whose contracted service period is less than 1 year - part time worker whose number of hours worked is less than 60 hours per month - director - majority shareholder and such shareholder's relatives
Number of workers	$\frac{\text{Sum of number of workers at end of month in a given fiscal period}}{\text{Number of months in the given fiscal period}}$

(c) Tax Credit Claw-back:

There will be a claw-back of the tax credit where the number of workers decreases within 2 years of

Newly Proposed
claiming the credit. The claw-back amount will be calculated as KRW 5 million (KRW 2 million for large companies) multiplied by the greater of the following: (1) Decrease in number of regular young workers vs. prior year (2) Decrease in total number of regular workers vs. prior year; or (3) Decrease in full time workers vs. prior year The proposed employment tax credit for young workers will apply from the fiscal year in which December 31, 2015 falls until the fiscal year in which December 31, 2017 falls.

8. Deduction to be allowed for contributions to hybrid retirement pension accounts *[Article 44-2(4) of the CITL-PD]*

The deduction limit for amounts contributed to Defined Benefit (DB) retirement pension accounts has been revised to equal total contributions to retirement pensions less the amount of Defined Contribution (DC) retirement pensions that have been deducted. As a result, contributions to hybrid retirement pensions, which permit employees to participate in both DB and DC retirement pension plans simultaneously, will now be deductible.

Before Amendment	After Amendment
Deduction limit for contributions to retirement pensions:	Deductions to be allowed for contributions to hybrid retirement pension accounts
(a) DC retirement pension: Total amount of premiums paid	(a) (No Change)
(b) DB retirement pension: ① - ②	(b) DB retirement pension: ① - ② - ③
① The greater of (1) or the sum of (2) and (3) below: (1) Estimated retirement (severance) payments [excluding DC participants] – deduction taken for retirement payment reserve (2) Actuarial base amount under the Employee Retirement Income Security Act – deduction taken for retirement payment reserve (3) Estimated retirement (severance) payment for non-pension participants + Estimated period for non-pension participants [excluding DC participants]	① (No Change) ※ (1) Deleted the phrase “excluding DC participants” ※ (3) Deleted the phrase “excluding DC participants”

Before Amendment	After Amendment
② Premiums paid on DB retirement pensions until immediately preceding year	② (No Change) ③ Amount allowed as deduction for DC retirement pension The above amendment applies after the promulgation date for the amendment.

9. Conditions required to extend tax audits clarified *[Article 63-11 of the NTBL-PD]*

Before Amendment	After Amendment
Generally, tax audits can only be extended when the following conditions are met. (a) Tax evasion pertaining to other fiscal periods, taxes or items is suspected. (b) The tax audit is converted to a tax evasion investigation during the audit. (c) Tax evasion or errors in the application of tax law relating to a specific item is clearly suspected and linked to other fiscal periods.	To protect taxpayer rights, the conditions for extending tax audits will be clarified, as follows: (a) There is specific evidence of tax evasion. (b) (No Change) (c) The specific item at issue exists in other fiscal periods, and similar incidents of tax evasion or errors are reasonably suspected to exist in other fiscal periods. The amendment will be effective when the revised NTBL-PD is promulgated.

V. Value Added Tax

1. Reciprocity to be required to claim zero rate VAT *[Article 33 of the VATL-PD]*

Before Amendment	After Amendment
Zero-rate VAT applies to certain goods and services provided to non-residents in return for payment in foreign currency. Under the VATL, zero-rate VAT may apply to business support services, as well as professional, scientific & technical services.	Under the proposed amendment, zero-rate VAT will only apply to previously designated services to the extent provided to non-residents residing in countries that allow similar zero-rate VAT treatment on a reciprocal basis.

Before Amendment	After Amendment
	The proposed amendment will apply to services provided on or after July 1, 2016.

2. Deadline for receipt of input VAT invoices extended *[Article 75 of the VATL-PD]*

Before Amendment	After Amendment
Generally, in order for a VAT taxable business to obtain an input VAT credit, the tax invoice must be received at the time of supply. However, an input VAT credit may still be claimed, provided the tax invoice is received no later than the end of the relevant VAT period (January 1~June 30 or July 1~December 31), although a penalty is imposed for late receipt of such tax invoice. .	The time period within which the tax invoice must be received to obtain an input VAT credit will be extended from the end of the VAT period to the due date for the filing of the VAT return for such VAT period. The due date for filing the VAT return is the 25th day of the month following the end of the relevant VAT taxable period (i.e., 25 July or 25 January). However, a penalty will continue to be imposed for late receipt of the tax invoice. The proposed amendment will apply to VAT-able transactions taking place on or after January 1, 2016.

3. B2B digital service transactions no longer subject to VAT *[Article 53-2(1) of the VATL]*

Before Amendment	After Amendment
From July 1, 2015, digital services (applications and content) supplied in Korea by a non-resident via computer or mobile devices are subject to Korean VAT under the simplified VAT reporting and payment system. Under the same system, the non-resident service provider is only required to report the total supply amount and is not required to issue a tax invoice.	Under the current VATL, a business taxpayer obtaining digital services from a non-resident is not able to claim an input VAT deduction as no tax invoice is issued under the simplified VAT reporting and payment system. In order to prevent unintended VAT from arising, the scope of VAT- taxable digital services supplied by a non-resident excludes digital services provided to a domestic business taxpayer (i.e., as opposed to services provided to end consumers). The amendment applies to VAT periods commencing from July 1, 2015.

VI. Individual Income Tax

1. Tax residency rules amended for Koreans residing abroad *[Article 4(3) of the IITL-PD]*

Before Amendment	After Amendment
The method used to measure the length of an individual's stay in Korea is as follows: (a) (General rule) Days are counted beginning on the date following entry into Korea and ending on the date of departure from Korea. (b) (Exception for temporary departures) Days spent outside of Korea are included in measuring the length of stay in Korea if the departure from Korea was clearly for temporary purposes, such as tourism, medical treatment, etc.	Under a new provision, temporary visits to Korea for non-business purposes, such as for tourism, medical treatments, and the like, by Koreans residing abroad will be excluded from the count of days spent in Korea for purposes of the tax residency test. The existing general day count rule and exception for temporary departures are retained. The new exception for temporary entry will apply to Koreans residing abroad (see below (*)). Rules to substantiate eligibility for this exception will be specified in the Ministerial Decree. (*) The term "Koreans residing abroad" is defined in the Act on the Immigration and Legal Status of Overseas Koreans, and generally includes the following: - a Korean national who has acquired permanent residency status in a foreign county or who resides in a foreign country with the intent to reside there permanently, - an individual who had Korean nationality (including individuals who emigrated prior to the establishment of the Republic of Korea) and has acquired foreign nationality, - an individual whose parents or grandparents had Korean nationality and who has acquired foreign nationality. The above amendment will apply on or after the promulgation date of the amendment.

2. Tax deferral to be allowed on the transfer of funds between Individual Retirement Pension (IRP) accounts and Individual Pension (IP) accounts *[Article 40-4(1) of the IITL-PD]*

Before Amendment	After Amendment
Individual income tax treatment of transfers of funds between IRP(*) accounts and IP(**) accounts: (a) Transfer of funds from an IRP to IP: • The retirement (severance) portion is taxed as retirement income at the time of transfer. • Additional contributions made to an IRP account that qualified for a (pension-contribution) tax credit and income/gain from investments are taxed as other income at the time of transfer. (b) Transfer of funds from an IP to IRP: • Contributions made to IP accounts that qualified for a (pension contribution) tax credit and income/gain from investment are taxed as other income at the time of transfer. (*) An IRP is a pension plan providing for benefit distributions conditioned upon the pension participant's retirement. IRP accounts differ from DB or DC pension accounts in that they are held under the name of the pension participant. (**) An IP is not associated with public pension plans sponsored by, for instance, the National Pension Service, or retirement plans sponsored by companies. The benefit distribution is not conditioned upon the pension participant's retirement.	Taxation is deferred on the transfer of funds between an IRP account and an IP account when the requirements (***) for receipt of pension benefits are satisfied. (***) The age of the pension account holder is 55 or older, and it has been at least 5 years since the establishment of the pension account. The above amendment applies after the promulgation date for the amendment.

3. Definition of "Large Shareholder" expanded for purposes of taxing capital gains from the sale of Korean shares *[Article 157(4) of the IITL-PD]*

Before Amendment	After Amendment
Shareholders are considered "large shareholders" if they meet the following conditions. (a) For Korea Exchange listed shares and unlisted shares:	The scope of "large shareholder" has been expanded to apply when the following conditions are met. (a) Korea Exchange listed shares and unlisted shares:

Before Amendment	After Amendment
• Shareholders owning 2% or more of the outstanding shares or having shares of KRW 5 billion or more in value	• Shareholders owning 1% or more of the outstanding shares or having shares of KRW 2.5 billion or more in value
(b) KOSDAQ listed shares: • Shareholders owning 4% or more of the outstanding shares or having shares of KRW 4 billion or more in value.	(b) KOSDAQ listed shares • Shareholders owning 2% or more of the outstanding shares or having shares of KRW 2 billion or more in value.
(c) KONEX(*) listed shares: • Shareholders owning 4% or more of the outstanding shares or having shares of KRW 1 billion or more in value.	(c) (No Change)
(*) KONEX, Korea New Exchange, is the third stock exchange, which was established on July 1, 2013 to ease the funding difficulties of venture companies or small and mid-size companies possessing promising technologies.	The above amendment will apply to transfers occurring on or after April 1, 2016, except for transfers of unlisted shares with respect to which the amendment will apply from January 1, 2017.

VII. Local Taxes

Deemed acquisition tax ("DAT")

1. Property in trust included in trustor majority shareholder's deemed acquisition tax base

[Article 7(5) of the LTL]

Before Amendment	After Amendment
It has not been clear under the LTL whether assets in trust registered under the name of a trustee are included in the tax base of the majority shareholder of (a) the trustor or (b) the trustee, for DAT purposes. In this regard, the Supreme Court recently held that real estate in trust shall be viewed as being owned by the trustee (with legal title), and therefore, the majority shareholder of the trustor has no DAT	In contrast with the 2014 Supreme Court decision, the amendment treats assets (e.g., land & buildings) held in trust that have been registered under the name of the trustee pursuant to the Trust Act as having been indirectly acquired by the majority shareholder of the trustor for DAT purposes. This amendment, thus, makes it clear that assets in trust are to be included in the tax base of the trustor's majority shareholder for DAT

obligation (Supreme Court 2014Du36266, rendered on September 4, 2014).	purposes. Though the amendment conflicts with the above-mentioned Supreme Court decision, it appears to have been based on the original intent of the DAT, which was to apply the tax when a majority shareholder is able to effectively manage or dispose of assets regardless of whether such assets were directly acquired. The provisions of the amendment will apply to shares acquired on or after January 1, 2016.

2. DAT look-back rule relaxed for changes in majority shareholder ownership *[Article 11 of the LTL-PD]*

Before Amendment	After Amendment
Where a majority shareholder's ownership ratio increases, DAT has been imposed to the extent that the majority shareholder's ownership ratio exceeds such shareholder's highest ownership ratio for the prior 5-year period.	The amendment removes the 5 year limitation on the look-back, such that DAT will be paid if the majority shareholder's ownership ratio is increased above such shareholder's highest previous ownership ratio. The provisions of this amendment will be applicable for shares acquired on or after January 1, 2016.

3. DAT treatment of KOSPI listed companies clarified *[Article 28-2 of the LTSTCL-PD]*

Before Amendment	After Amendment
Article 57-2 of the LTSTCL stipulates that the majority shareholder of KOSPI and KOSDAQ listed companies is exempt from DAT. This has given rise to some confusion as to whether the majority shareholder of KOSPI listed companies is subject to a 20% special tax for rural development, which generally acts as a 'minimum tax' when tax exemptions are claimed under the LTSTCL. It is clear that the 20% special tax for rural development applies when a majority shareholder acquires KOSDAQ listed shares. However, rulings have been issued by the local tax authorities to the effect that DAT does not apply from the outset to KOSPI listed shares. This interpretation effectively	The amendment removed the provision stating that the majority shareholder of KOSPI listed companies is exempt from DAT, while leaving the exemption for KOSDAQ listed companies intact. This seems to support the interpretation that DAT was not intended to apply to the acquisition of a majority stake in KOSPI listed companies from the outset, which eliminates the need to pay the 20% special tax for rural development on such acquisitions (consistent with the previously-mentioned ruling). The provisions of this amendment will be applicable for shares acquired on or after January 1, 2016.

renders the exemption provided under Article 57-2 of the LTSTCL meaningless for KOSPI shares, and thus, implies that the 20% special rural development tax ought not to apply upon acquisition of a majority stake in KOSPI listed companies even though an exemption is specifically mentioned under Article 57-2 of the LTSTCL.	

Acquisition tax

4. Merger related acquisition tax benefits further limited *[Article 15(1)(iii) of the LTL and Article 57-2 of the LTSTCL]*

Before Amendment	After Amendment
The real estate acquisition tax consists of a 2% acquisition tax component and a 1.5% registration tax component. When an acquisition results from a merger, the 2% acquisition tax component is not applicable, and an exemption is granted from the 1.5% registration tax component provided certain requirement are met under the LTSTCL (e.g., surviving company and merged company should have been operated for 1 year or longer). Recapture provisions previously did not exist in the case of a merger for either of these two components.	This amendment limits these tax benefits to mergers that satisfy the requirements under Article 44(2) or 44(3) of the CITL ("Qualified Mergers"). The requirements under Article 44(2) of the CITL include the following: (a) The surviving company and the merged company should have been operated for one year or more; (b) 80% or more of the merger consideration should consist of shares; and (c) The surviving company should continue the business of the merged company until the end of the fiscal year in which the merger was registered with the court. Article 44(3) of the CITL requires that the merger be between a 100% parent and its subsidiary. The amendment also includes provisions for the recapture of exempted acquisition tax. Even if a merger satisfies all the conditions for a Qualified Merger under the CITL, the tax benefits granted for such a merger will be recaptured upon the occurrence of events specified in Article 44-3(3) of the CITL within 3 years from the date when the merger is registered with the court. These recapture rules will essentially be triggered when one of the following events occurs.

	(a) If the surviving company discontinues the business of the merged company within 3 years of the merger registration date; or (b) If the controlling shareholders of the merged company dispose the newly issued shares of the surviving company within 3 years from the merger registration date When a merger is planned or a reorganization is anticipated subsequent to a merger, these recapture rules should be thoroughly examined to avoid negative tax consequences. The provisions of this amendment will apply from January 1, 2016.

5. Acquisition and property tax exemption ceiling to apply more broadly *[Article 177-2 of the LTSTCL]*

Before Amendment	After Amendment
Real estate acquisition and property tax exemptions were previously capped at 85% of the tax otherwise due (applied separately to each type of tax) regardless of the individual exemption rules under the LTSTCL (including the 100% exemption). However, the above 85% cap did not apply, and the 100% exemption was allowed, in specific cases including the following: • Acquisition tax amount is less than or equal to KRW 2 mil or property tax amount is less than or equal to KRW 0.5 mil; • Schools and foreign educational institutions; • Religious and ceremonial service organizations; • Corporate mergers and spin-offs; and • Relocation of companies/factories to outside the Seoul Metropolitan Area.	As a result of the amendment, the 100% exemption will no longer apply in the following cases, resulting in the imposition of the 85% cap going forward. (a) Corporate mergers; spin-offs under Article 57-2 of the LTSTCL (excluding mergers between financial institutions prescribed under the law); and (b) Relocation of companies/factories to outside the Seoul Metropolitan Area. The dates from which the 85% cap will be applied vary (e.g., January 1, 2016 for case (a) and January 1, 2019 for case (b) above).

6. Statute of limitations extended for certain acquisition tax liabilities *[Article 38 of the LTBL]*

Before Amendment	After Amendment
The statute of limitations for failure to file local income tax or local consumption tax returns is 7	The amendment has extended the statute of limitations for failure to file acquisition tax returns by

Before Amendment	After Amendment
years. For acquisitions resulting from an inheritance, the statue is 10 years, and in other cases it is generally 5 years.	the filing due date from 5 years to 7 years. The amendment also applies the 10-year statute of limitations to: (1) acquisitions resulting from gifts, and (2) *de facto* acquisitions by a party having actual rights to real-estate under a title trust agreement pursuant to Article 2(1) of the Registration of Real Property by Real Owners Name Act (formerly subject to a 5-year statute of limitations). The provisions of the amendment will be applicable to local taxes that can be imposed on or after January 1, 2016.

Property taxes

7. Property tax to increase for certain Private REFs *[Article 102 of the LTL-PD]*

Before Amendment	After Amendment
Land owned by REFs under Article 229(2) of the FISCMA was previously subject to lower property tax brackets/rates, since properties held by REFS were taxed separately rather than on an aggregate basis.	Based on the amendment, public REFs will continue to be able to determine property taxes on a property-by-property basis. However, private REFs will be subject to property tax on an aggregate basis unless 80% or more of their assets are invested in real-estate. The provisions of this amendment will be applicable for property tax levied on or after January 1, 2016.

8. Property tax deduction clarified for comprehensive real estate tax *[Articles 4-2 and 5-3 of the Presidential Decree of the Comprehensive Real Estate Tax Law ("CRETL-PD")]*

Before Amendment	After Amendment
Previously, the property tax deduction (i.e., deduction of property tax from the comprehensive real-estate tax to avoid double taxation) was calculated as follows according to a recent Supreme Court decision (Supreme Court 2012Du7073, rendered on June 24, 2015):	In contrast with the 2015 Supreme Court decision, a portion of the property tax is now non-deductible when determining the comprehensive real estate tax pursuant to the amended CRETL-PD. The amendment provides the following formula, which reduces the amount of property tax deduction that can be taken.

Before Amendment			After Amendment		
Sum of Property Tax Assessed	x	(Government Posted Value – Amount not Subject to Comprehensive Real Estate Tax) x Adjustment Property Tax Rate (70% for Land, 60% for Houses) x Standard Property Tax Rate / Calculated Property Tax on Aggregate Real Estate using Standard Property Tax Rate	Sum of Property Tax Assessed	X	(Government Posted Value – Amount not Subject to Comprehensive Real Estate Tax) x Adjustment Rate for Comprehensive Real Estate Tax (80%) x Adjustment Property Tax Rate (70% for Land, 60% for Houses) x Standard Property Tax Rate / Calculated Property Tax on Aggregate Real Estate using Standard Property Tax Rate
			The provisions of this amendment will apply from November 30, 2015.		

If you have any questions regarding this article, please contact below.

Im Jung CHOI	ijchoi@kimchang.com	+822-3703-1143
Dong So KIM	dskim@kimchang.com	+822-3703-1013
Tae Yeon NAM	tynam@kimchang.com	+822-3703-1028
Jeremy EVERETT	jeremy.everett@kimchang.com	+822-3703-4642
Hoon LEE	hoon.lee@kimchang.com	+822-3703-1269

For more information, please visit our website.

www.kimchang.com ▶ General Tax Consulting Practice Group ▶