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1 Corporate Income Tax

Corporate Income Tax
Corporate income tax

Tax Rate
The basic Korean corporate tax rates (including a local surtax of 10 percent of the corporate income tax due) are currently:
- 11 percent on the first KRW 200 million of the tax base
- 22 percent up to KRW 20 billion
- 24.2 percent for amounts above KRW 20 billion

Residence
A corporation is considered to be resident in Korea if the corporation has its head or main office, or place of effective management in Korea. A resident corporation is liable in Korea for corporate income tax on its worldwide income.
A non-resident corporation is liable for corporate income tax on income from Korean sources only. However, liquidation income of a non-resident corporation is not taxable.

Compliance requirements
A Public Corporation is a corporation that is either listed on a public stock exchange or has prior year income greater than KRW 7 billion. Public Corporations are subject to statutory audit by an independent certified public accountant and must submit externally audited financial statements with their annual corporate tax returns. If a Public Corporation does not submit externally audited financial statements with its annual corporate tax return, the filing will not be accepted, and the entity will be subject to non-compliance penalties.

The corporate tax return must be filed within three months of the last day of the taxation year.
International Withholding Tax Rates

Dividends paid to a non-resident are subject to withholding tax of 22 percent unless the withholding tax rate is reduced by a tax treaty between Korea and the other contracting state.

Royalties paid to a non-resident are subject to withholding tax of 22 percent (or 2.2 percent on income arising from rental of industrial, commercial or scientific equipment), unless the withholding tax rate is reduced by a tax treaty between Korea and the other contracting state.

Interest paid to a non-resident is subject to withholding tax of 22 percent (or 15.4 percent for interest on bonds issued by the State, local government and a domestic corporation), unless the withholding tax rate is reduced by a tax treaty between Korea and the other contracting state.

Payments for personal services or other income paid to a non-resident are subject to withholding tax of 22 percent unless the withholding tax rate is reduced by a tax treaty between Korea and the other contracting state.

Income or gains derived by a non-resident from the transfer of real property, or transfer of shares of a corporation that is substantially a real estate holding corporation situated in Korea, are subject to withholding tax at the lesser of:

- 11 percent of total value of the transferred property, or
- 22 percent of the gains realized on the transfer.

This is the case unless the withholding tax rate is reduced by a tax treaty between Korea and the other contracting state.

Income or gains derived by a non-resident from the transfer of shares of a Korean corporation are subject to withholding tax at the lesser of:

- 11 percent of total value of the transferred property, or
- 22 percent of the gains realized on the transfer.

This is the case unless the withholding tax rate is reduced by a tax treaty between Korea and the other contracting state.

Every tax rate specified above includes ten percent of local income tax, which is taxed on corporate tax and local income tax.
**Holding rules**

**Dividends received from subsidiary companies**

Dividends are generally taxable under corporate income tax. However, in order to prevent double taxation, dividend received deductions ("DRD") are available if certain requirements are met. The DRD is available for dividend income received by a Korean resident company from another Korean company. The DRD ratio ranges from 30 percent to 100 percent and varies depending on whether the parent company is a qualified holding company under Korean law and the ownership percentage of the parent. To apply DRD rates, only the shares held for at least three months (as of the date of dividend payment) can be included in the application of the DRD rates. Deduction limits for a company receiving dividends are as follows:

<table>
<thead>
<tr>
<th>Non-listed corporation</th>
<th>Listed corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shareholding</td>
<td>DRD</td>
</tr>
<tr>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>More than 50%, less than 100%</td>
<td>50%</td>
</tr>
<tr>
<td>50% or less</td>
<td>30% DRD</td>
</tr>
</tbody>
</table>

If a ‘financial holding company (as defined under the Financial Holding Company Law) or another ‘holding company’ (declared to the Korean Fair Trade Commission) receives a dividend from a subsidiary, the dividend will be deducted from the holding company’s taxable income at the following rates:

<table>
<thead>
<tr>
<th>Non-listed corporation</th>
<th>Listed corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shareholding</td>
<td>DRD</td>
</tr>
<tr>
<td>More than 80%</td>
<td>100% DRD</td>
</tr>
<tr>
<td>More than 40%, less than 80%</td>
<td>80% DRD</td>
</tr>
</tbody>
</table>

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Holding rules (continued)

Dividends received from a foreign company

Dividends received from a foreign company are, in principle, subject to corporate income tax in Korea. However, the company receiving the dividends may be eligible for an indirect foreign tax credit for foreign income taxes paid by the foreign company in its country of residence.

Capital gains and losses

Capital gains/losses of a domestic corporation are included in its taxable income and taxed at the standard corporate income tax rates. For certain mergers that satisfy “proper merger” requirements, any tax liability that arises as the result of the merger will be flowed through to the surviving merged corporation. Gains from treasury stocks are also taxable.

Tax Losses

Tax losses incurred on or after 1 January 2009 can be carried forward and used to offset taxable income earned during the subsequent ten years, starting from the year immediately after the fiscal year the tax losses were incurred. For tax losses incurred on or before 31 December 2008, these losses can only be carried forward for five years.

In general, tax losses cannot be carried back. However, ‘special carry-back’ rules exist under Article 2 of the Enforcement Decree of the Tax Incentive Limitation Law which can enable small and medium-sized companies to carry back losses to the preceding year.
Transfer of shares

Securities Transaction Tax

Securities Transaction Tax (STT) is imposed on transactions involving transfer of stocks as follows:

- Transfer of shares issued by Korean entities. However, shares issued by Korean entities which are listed on certain foreign securities markets shall not be subject to STT.
- Transfer of shares issued by foreign entities which are listed on Korean security markets. Unlisted foreign shares are not subject to STT.

The STT is levied on the sellers. If the seller is a non-resident or a foreign entity, the buyer should withhold and remit the tax to the tax authorities on behalf of the seller within two months from the end of the quarter in which the share transfer transaction takes place.

The STT is, in principle, levied at 0.5 percent; however, special rates may apply in the following cases:

- Stocks transferred on the KOSPI stock market: 0.15 percent (additionally, this case is subject to special rural development tax at 0.015 percent)
- Stocks transferred on the KOSDAQ stock market: 0.3 percent.

If the transfer price is lower than the fair market value in the case of a related-party transaction, the fair market value would be used as the tax basis for the STT purposes.

Capital Gains Tax

Capital gains/losses of a resident corporation are included in its taxable income and taxed at the standard corporate income tax rates (see page 1).

For individual shareholders, capital gains tax is levied on the transfer of all unlisted stocks (22 percent), and the transfer of listed stocks if transferred within one year disposal as from the purchase dates, by major shareholders (33 percent). For small and medium sized company stock, the rate of capital gains tax is 11 percent. The above mentioned rates include a local surtax of 10 percent of the personal income tax due. For corporate shareholders, capital gains/losses are included in taxable income and taxed at the standard corporate income tax rates. For certain mergers that satisfy “proper merger” requirements, any tax liability that arises as the result of the merger will be flowed through to the surviving merged corporation. Gains from treasury stocks are also taxable.
**Transfer of shares (continued)**  
**Acquisition Tax**

No acquisition tax will be levied generally on transfers of shares. An exception to this rule will apply if the company (private company) has certain statute-defined underlying assets (e.g. land, buildings, structures, vehicles, certain equipment, and various memberships) that are subject to acquisition tax. If the investor and its affiliates collectively acquire, in aggregate, more than 50 percent of the shares in the target company, they will be “deemed” to have indirectly acquired those taxable properties through the share acquisition, and will therefore be subject to acquisition tax at a rate of either two percent or 2.2 percent based on the asset type.

**Transfer of assets**

**Capital Gains Tax**

In case of individuals, the capital gains tax rate on the disposal of land and buildings varies from 10 percent to 70 percent depending on the holding period and type of property.

**Acquisition Tax**

Acquisition tax shall be imposed on a person who has acquired certain property or rights. Tax rates depend on the property acquired and acquisition methods.

**CFC rules**

In the case where 10 percent or more of the issued shares in a foreign company are owned by a Korean resident, and the average effective income tax rate of the foreign company for the most recent three consecutive years is 15 percent or less, the Korean resident is deemed to have received a dividend of an amount equal to "deemed distributable retained earnings" multiplied by the shareholding ratio (even if there has been no actual distribution of such retained earnings to the Korean resident).

The deemed dividend amount is the total distributable retained earnings, adjusted by items such as previous deemed dividend amounts (taxable to the Korean parent company), mandatory reserves, and gain/loss on share valuation. The CFC income will be included in the taxable income of the Korean parent company in the tax year to which the 60th day after the CFC’s fiscal year end belongs.
Transfer Pricing

**Transactions with non-resident related parties**

Under Korean tax law, the tax authority has the ability to adjust a transfer price and recalculate a resident’s taxable income when the transfer price used between a Korean company and its foreign related-party differs from the arm’s length price. The arm’s length price should be determined by the most reasonable method applicable to the situation.

A taxpayer is required to submit a summary income statement for foreign related party transactions to the tax authority alongside its annual tax return. In addition, the tax authority may request supporting documentation for related party transactions.

A resident may file an application with the National Tax Service (NTS) for approval to use a transfer pricing method (TPM) for a particular period. The application should be made no later than the last day of the first taxable year for that period. The NTS may grant approval for the TPM when a resident agrees with the competent authority of the contracting State through mutual agreement procedures. Residents may also choose to submit an APA (Advanced Pricing Agreement), if determined necessary.

**Transactions with domestic related parties**

Taxing authorities may assume that all prices used in related party transactions are market price and recalculate the profits based on the market prices. In cases where a taxpayer has unrightfully decreased or transferred its profit to a related party by transacting the goods, services or capital at below or above the market price, the taxing authorities would impose the relevant taxes based on market prices.

Thin Capitalisation

In the case where a Korean company borrows from its foreign controlling shareholders an amount greater than three times its equity (3:1 debt to equity ratio in general or 6:1 in the case of financial institutions), interest payable on the excess portion of the borrowing is characterised as a dividend. The article on dividends in a relevant tax treaty (if any) applies.

General Anti-avoidance

Korean tax law contains a substance over form rule that allows the tax authority to re-characterise a transaction based on its substance.

Where the tax burden of a company has been unjustly reduced through transactions with related parties, the tax authorities may recalculate the income amount of the concerned company based on the fair market value that would have been established between independent companies engaged in similar transactions under comparable circumstances.
Anti-treaty shopping
To resolve treaty shopping problems, the Korean government has tried to re-negotiate with several countries that have a tax treaty with Korea. The tax treaty with Austria (in 2011) and the tax treaty with Switzerland (in 2012) have been renegotiated (Source: Press releases of Ministry of Strategy and Finance).

Other specific anti-avoidance rules
None.

Rulings
There are two types of rulings available – letter rulings and advanced rulings.

Letter Ruling: A process where the National Tax Service (NTS) responds by letter to an enquiry made (by a taxpayer) regarding their interpretation on a section of the Income Tax Act. The letter rulings are made publicly available on the NTS website.

Advance Ruling: An advance income tax ruling is a written statement given by the NTS to a taxpayer stating how the NTS will interpret and apply specific provisions of existing income tax law to a definite transaction or transactions which the taxpayer is contemplating. Full disclosure by the taxpayer is required as part of the process. Advance rulings are made publicly available on the NTS website.

R&D Incentives
Various types of tax credits and exemptions are available to stimulate R&D activities including:
- Tax credits for research and human resources development expenses
- Special taxation for contributions to research and development
- Tax credits for investment in facilities for research and manpower development
- Special taxation for acquisition cost of technology
- Reduction of or exemption from corporate tax (e.g. for high-tech enterprises moving to special research and development zones)

Other incentives
Korea has tax incentives aimed at attracting investment from abroad including:
- Tax reduction and exemption from corporate income tax, acquisition tax, and property tax
- Exemption from customs duties and value added tax
- Exemption from tax on technical license royalties
Hybrid Instruments

Corporate Tax Act treatment: The law doesn’t provide clear regulation on the classification of hybrid instruments. However, related authoritative interpretations view hybrid instruments that are issued in the form of bonds according to the commercial law, as liabilities.

Hybrid entities

In order to prevent double taxation, a partnership will not be taxed by the relevant taxing authority at the partnership level; instead, income generated by a partnership is taxed at the individual partner level.

Domestic entities should report their eligibility for the special tax provisions of partnerships:

- When the partnership is first established, the application should be made within one month of the beginning of the first taxable year.
- When an existing entity transforms into a partnership, the application should be made before the beginning of the taxable year in which it intends to be subject to special taxation. In this case, quasi-liquidated income should be paid within three months of the closing of the taxable year, in which the entity intends to be subject to special taxation.

In addition, the domestic corporation is required to remit any resulting tax on the deemed disposition in three annual instalments.

Special tax regimes for specific industries or sectors

The rules for calculating the income amount and claiming tax deductions vary significantly between industries.
2 Income Tax Treaties for the Avoidance of Double Taxation

In Force

Albania
Algeria
Australia
Austria
Azerbaijan
Bangladesh
Belarus
Belgium
Brazil
Bulgaria
Canada
Chile
China
Croatia
Czech Republic
Cook islands
Denmark
Egypt
Estonia
Fiji
Finland
France
Germany
Greece
Hungary
Iceland
India
Indonesia
Iran
Ireland
Israel
Italy
Japan
Jordan
Kazakhstan
Kuwait
Laos
Latvia
Lithuania
Luxembourg
Malaysia
Marshall islands
Malta
Mexico
Mongolia
Morocco
Myanmar
Nepal
Netherlands
New Zealand
Norway
Oman
Pakistan
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Romania
Russia
Saudi Arabia
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
New treaties and protocols have been negotiated with Bahrain, Colombia, Peru, and Sudan, but at the time of writing are not yet in force.

*Source: Ministry of Strategy and Finance*
3 Indirect Tax

Indirect Tax

Value Added Tax (VAT)

Standard Rate

The standard rate of VAT is 10 percent.
Exports are zero-rated and certain items are VAT-exempt.

Further information

For more detailed indirect tax information, refer to:
KPMG’s VAT/GST Essentials
4 Personal taxation

Income Tax
A resident is liable to tax on all taxable income from domestic and foreign sources, and a non-resident is liable to tax on Korean sourced income only.

Top Rate
The top personal tax rate in Korea is 41.8 percent (including a local surtax of 10 percent of the personal income tax due), and this rate applies to taxable income in excess of KRW 300million.

Social Security
Korea’s social security system comprises four plans:
- National pension plan in which the contribution of nine percent is split equally between the employer and employee
- National health insurance in which the contribution of 5.89 percent is shared equally between the employer and employee
- Industrial accident compensation insurance in which the entire contribution of 0.7 percent to 35.4 percent (depending on the employer’s industry) is borne by the employer
- Employment insurance which is split between ‘unemployment’ (of which the contribution of 1.1 percent is shared equally between the employer and employee), and ‘employee ability development premium’ (of 0.25 percent to 0.85 percent which is borne entirely by the employer).

Further information
For more detailed personal taxation information, refer to:
KPMG’s Thinking Beyond Borders
<table>
<thead>
<tr>
<th>International Social Security Agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of the end of December 2012, Social Security Agreements with a total of 28 countries have been entered into:</td>
</tr>
<tr>
<td>Australia</td>
</tr>
<tr>
<td>Austria</td>
</tr>
<tr>
<td>Belgium</td>
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<tr>
<td>Brazil</td>
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<tr>
<td>Bulgaria</td>
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<tr>
<td>Canada</td>
</tr>
<tr>
<td>China</td>
</tr>
</tbody>
</table>

Source: Ministry of Foreign Affairs
5 Other Taxes

Branch tax
Branch tax of 20 percent (22 percent inclusive of the 10 percent resident surtax) of the adjusted taxable income of a Korean branch of a foreign corporation is payable.

This rate may be reduced under a tax treaty and certain tax treaties provide complete relief from branch tax.

Customs duty
Goods imported into Korea are subject to customs duty. The amount of duty depends on the quantity and value of the goods imported.

Stamp duty
Stamp duty is levied on agreements in relation to the creation, transfer, or alteration of rights in respect of assets. If more than two parties enter into an agreement, the parties are jointly liable for the stamp duty.

The amount of stamp duty imposed on each original document varies between KRW 100 and KRW 350,000.

Acquisition tax
Acquisition tax is imposed on a person who has acquired various assets or rights. Tax rates depend on the items to be acquired and acquisition method.

Capital duty
A capital registration tax of 0.48 percent including the local surtax is levied on the paid-in capital increase. If the company is incorporated in the Seoul Metropolitan area, it triples to 1.44 percent.

Inheritance tax
Property acquired through inheritance or bequest is liable to inheritance tax.

Gift duty
A donee is liable to pay gift tax on all gifted property.
## 6 Free Trade Agreements

### In force

<table>
<thead>
<tr>
<th>Country 1</th>
<th>Country 2</th>
<th>Country 3</th>
<th>Country 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>India</td>
<td>Singapore</td>
<td>United States</td>
</tr>
<tr>
<td>European Union</td>
<td>Peru</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASEAN -</td>
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<tr>
<td>Brunei Darussalam</td>
<td>Lao</td>
<td>Philippines</td>
<td>Thailand</td>
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<tr>
<td>Cambodia</td>
<td>Malaysia</td>
<td>Singapore</td>
<td>Vietnam</td>
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<tr>
<td>Indonesia</td>
<td>Myanmar</td>
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<tr>
<td>EFTA – Korea Free Trade Agreement -</td>
<td>Iceland</td>
<td>Liechtenstein</td>
<td>Norway</td>
</tr>
</tbody>
</table>

### Concluded / signed (pending domestic ratification)

<table>
<thead>
<tr>
<th>Country 1</th>
<th>Country 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colombia</td>
<td>Turkey</td>
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</tbody>
</table>

### In negotiation

<table>
<thead>
<tr>
<th>Country 1</th>
<th>Country 2</th>
<th>Country 3</th>
<th>Country 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>China</td>
<td>Indonesia</td>
<td>Vietnam</td>
</tr>
<tr>
<td>Canada</td>
<td>China – Japan - Korea</td>
<td>New Zealand</td>
<td></td>
</tr>
<tr>
<td>Regional Comprehensive Economic Partnership –</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASEAN</td>
<td>China</td>
<td>Japan</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Australia</td>
<td>India</td>
<td>Korea</td>
<td></td>
</tr>
</tbody>
</table>

*Source: Ministry of Foreign Affairs and Trade*
7 Tax Authority

Tax Authority
National Tax Service (NTS)

Link to National Tax Service

Tax audit activity
NTS conducts periodic audits at a fixed four year intervals for large enterprises (whose annual revenue is KRW 500 billion or more), and five year (or longer) intervals for small and medium enterprises.

However, targeted or special audit investigations can be performed at any time.

Key focus areas for the tax authority in tax audits conducted in recent years have included:

- Transfer pricing
- Offshore tax evasion
- Inclusion of expenses without supporting evidence
- Intelligent tax evasion through equity transactions, such as mergers and splits
- Unreasonable lending through the acquisition of treasury stock
- Application of an unreasonable tax deduction or exemption
- Taking a foreign tax credit which exceeds the creditable amount of foreign taxes
Appeals

Review system of the legality before taxation (before tax notice)

A taxpayer may file an objection to the tax review results or income tax assessment within 30 days from the date of receipt of the notice. Upon receipt of objection, the Tax Commission will deliberate, and the Commissioner shall notify the result to the taxpayer within 30 days.

Tax appeal (after tax notice)

Step 1: There are four remedies available before filing an administrative litigation as follows:

- Objection: to be filed with the District Tax Office or a commissioner of the regional NTS
- Appeal for review: to be filed with the NTS
- Appeal to Tax Tribunal: to be filed with the Tax Tribunal of the Prime Minister’s office
- Appeal for review by the Board of Audit and Inspection: to be filed to the Board of Audit and Inspection

The aforementioned remedies should be filed within 90 days from the date of receipt of the notification or the date a taxpayer becomes aware of the imposed tax. The organisation where the remedy is filed shall notify the result to the taxpayer within 30 days for an objection; 90 days for an appeal for review and appeal to tax tribunal; and three months for an appeal for review by the Board of Audit and Inspection.

Step 2: If no remedy results from Step 1, an administrative litigation can be filed, and the relevant document shall be submitted to the court within 90 days from the date of receipt of the result.
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