



GMS Flash Alert



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South Korea - Tax Provision Bill with Measures for Foreign Workers Becomes Law

South Korea's 2021 Tax Law Amendment Bill ("the Bill")¹ was passed into law by the National Assembly.

In this *GMS Flash Alert*, we summarize key features of the new tax Bill, amongst which, application of the flat tax rate and the foreign engineers' tax reduction, as well as reporting of overseas/non-Korean real estate.

WHY THIS MATTERS

Tax costs and budgets for inbound South Korean expatriates will likely be affected by the extension of the flat tax rate and income tax reduction for foreign engineers. In order to avoid any unexpected tax implications, the changes described below should be taken into account when evaluating international assignment costs and budgets for assignees sent into and out of South Korea.

Moreover, adjustments to the rules around payroll withholding on service fees paid to certain foreign entities and reporting of overseas real estate could mean additional changes to policies and practices and more administration for affected companies and individuals.

Flat Tax Rate: Extension of Sunset Clause

The sunset clause regarding application of the flat tax rate as of 31 December 2021, has been extended to 31 December 2023. A foreign worker who begins to first provide labor in South Korea on or before 31 December 2023, can elect to have the 19-percent flat tax rate (20.9 percent including local income tax) applied for five consecutive tax years, including the first year he/she starts to work in South Korea. For example, if a foreign worker starts to work on any day in 2023, he/she can elect to have the flat tax rate apply up to 31 December 2027. Other statutory components of the flat tax remain intact. (Please refer to [GMS Flash Alert 2018-044](#) (1 March 2018) and [GMS Flash Alert 2021-222](#) (25 August 2021) for more details on the flattax.)

Extension of Sunset Clause for Foreign Engineers' Tax Reduction

The sunset clause regarding application of the foreign engineers' tax reduction as of 31 December 2021, has been extended to 31 December 2023.

A foreign engineer prescribed by presidential decree is granted a tax reduction equivalent to 50 percent of the income tax on his earned income for five years (60 months) from the date he commenced employment in South Korea if he starts to work in the country before 31 December 2023, for the first time. For example, if a foreign engineer starts to work in December 2023, he may be granted the income tax reduction up to 30 November 2028. (For prior coverage, see [GMS Flash Alert 2021-222](#), 25 August 2021.)

KPMG NOTE

A foreign engineer prescribed by presidential decree means a non-South Korean national who meets one of the following criteria:

- A person who provides technology in Korea under an engineering technology license agreement prescribed by ordinance of the Ministry of Strategy and Finance. The license agreement means an agreement where the contract price is equal to or more than USD 300,000.
- A person qualifying under all of the following criteria:
 - ◆ A person who has a bachelor's degree or higher in the natural sciences, science, and engineering fields, or medical fields.
 - ◆ A person who has experience in R&D and technology development for at least five years (two years including experience prior to obtaining a Ph.D. in the case of a person with a Ph.D.) at a foreign university or research institute prescribed by ordinance of the Ministry of Strategy and Finance.
 - ◆ As of the end of the relevant tax year, there is no kinship or business control relationship between a person and the company for which a person provides labor.
 - ◆ A researcher in one of the following institutions or departments prescribed by Presidential Decree:
 - A corporate-affiliated research institute or R&D department recognized by the Minister of Science and Information and Communications Technology (ICT) pursuant to Article 14-2 (1) of the *Basic Research Promotion and Technology Development Support Act*;
 - A government-funded research institute under Article 2 of the *Act on the Establishment, Operation and Fostering of Government-Funded Research Institutions, etc.* or a government-funded science and ICT research institute or its affiliated research institute under Article 2 of the *Act on the Establishment, Operation and Fostering of Government-Funded Science and ICT Research Institutions*;
 - A specific research institute or its affiliated research institute under Article 2 of the *Specific Research Institutions Promotion Act*;
 - A university, industrial college, junior college, or technical college, or its affiliated research institute under Article 2 of the *Higher Education Act*;
 - Korea Institute of Ocean Science and Technology established under the *Korea Institute of Ocean Science and Technology Act*;

- Defense Science Research Institute established in accordance with the *Defense Science Research Institute Act*;
 - A specialized production technology research institute under Article 42 of the *Industrial Technology Innovation Promotion Act*;
 - An industrial technology research association under the *Industrial Technology Research Association Promotion Act*.
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Updated Withholding Requirements for Korean Companies Engaging Employees Dispatched from a Foreign Entity

A South Korean company is required to file a payroll withholding tax return at a flat rate of 19 percent (20.9 percent including local income tax) on the service fee payable to a foreign entity dispatching its employees under certain conditions (we have previously covered this in [GMS Flash Alert 2018-044](#), 1 March 2018). The criteria for the service fee payable have been amended for the Korean tax authority to determine in advance whether domestic corporations are obligated to withhold taxes, and it shall take effect in business years beginning on or after 1 January 2022. The annual service fee payable to the foreign entity must fall into one of the following:

- A. Total value of service fees on a contract agreement with the foreign entity exceeds KRW 2 billion; or
- B. Actual service fees paid in the immediately-preceding tax year exceeds KRW 2 billion.

Toughened Requirements for Statement of Acquisition and Management of Overseas Real Estate (Form 51)

Tax residents who have acquired any overseas (non-Korean) real estate, have had operating (including rental) income therefrom, or have sold any overseas real estate, are required to submit the *Statement of Acquisition and Management of Overseas Real Estate* (Form 51, formally known as Form 97) to the local district tax office where the acquisition/disposal price is KRW 200 million or more. (For prior coverage, see [GMS Flash Alert 2021-222](#), 25 August 2021.)

However, the relevant tax law has been amended to include tax residents who have *held* overseas (non-Korean) real estate; also they will be required to submit the Form 51 when the acquisition price is KRW 200 million or more effective from 2021 filings (due by 30 June 2022).

Capped Taxpayer Association Tax Credit

Individuals may elect to pay taxes on the employment income paid by the non-Korean entity through filing an annual income tax return or joining a licensed taxpayer's association and paying taxes on a monthly basis through the association. All association members can obtain a 5-percent credit of income tax payable within an upper credit limit of KRW 1 million per taxpayer taking effect for employment income earned from 1 January 2022.

KPMG NOTE

The credit limit of KRW 1 million shall be prorated on a monthly basis according to the period of employment in South Korea.

Update to Range of Tax-Exempted Welfare Benefits and Issues Related to Housing Support and Corresponding Korean Income Taxes

Housing support in South Korea has now been classified as a non-taxable welfare benefit effective as of January 2021, whereas it was considered as a tax-exempt benefit to employees previously.

KPMG NOTE

It may represent a significant drawback to foreign employees who elect to apply the flat tax rate to their employment income tax filings in South Korea since tax deductions, reductions, exemptions, and tax credits related to income tax under the Income Tax Act shall not apply where the flat tax rate has been applied

It has been amended to extend its grace period so that such housing support will remain tax-exempt in South Korea until 31 December 2023, for foreign employees who elect to apply the flat tax rate, provided that the required conditions are fully met. Please refer to the below-stated conditions for the housing support to be treated as tax-exempt:

- Rental contract has been signed between the employer and the lessor;
 - The entire rental payments have been made directly to the lessor by the employer (and not through the employee/assignee concerned and he/she does not bear any portion of such costs); and
 - Housing facility is a regular residential house/apartment (as opposed to a hotel or serviced apartment).
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KPMG NOTE

Prior to the tax revision, the housing support in South Korea was classified as the tax-exempt and it was excluded from taxable employment income of all foreign employees regardless of the application of the flat tax rate to their employment-income tax filings in Korea.

As of 1 January 2024, any qualified housing support provided by the employer shall be added back to the taxable employment income for foreign employees who elect to apply the flat tax rate to their employment income tax filings in Korea.

FOOTNOTE:

1 For the announcement (in Korean) on the bill, see:

https://www.moef.go.kr/nw/nes/detailNesDtaView.do?searchBbsId1=MOSFBBS_000000000028&searchNttId1=MOSF_000000000055951&menuNo=4010100.

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KRW 1 = EUR 0.00074

KRW 1 = USD 0.00082

KRW 1 = GBP 0.00063

KRW 1 = AUD 0.00112

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