The following tax information is translated from Korean for foreign-invested companies, and is not legally binding.

Q. A domestic company that operates a lease business adopted K-IFRS in 2015. Consequently, lease contracts that were classified as operating lease under K-GAAP were reclassified as a financial lease, which increased the company’s portion of financial lease business. In this case, can the company be considered an operator of a financial business under the insufficient capital tax system?

A. In this case, whether the company can be considered to operate a financial business after the adoption of K-IFRS shall be determined based on the Korea Standard Industrial Classification notified by the Commissioner of Statistics Korea pursuant to Article 22 (1) of the Statistics Act. Under the insufficient capital tax system, where a domestic company borrows funds from a foreign controlling shareholder or from a third party under a payment guarantee by the foreign controlling shareholder and such borrowings exceed two times (six times in the case of finance businesses) as much as the equity shares contributed with shares by the relevant foreign controlling shareholder, the interest paid and discount fee for the amount in excess shall be deemed to have been disposed of as dividend pursuant to Article 14 of the Adjustment of International Taxes Act, and therefore not be included in the domestic company’s deductible expense.

Source: National Tax Service (Jul. 15, 2016)

Q. Is a Korean with U.S. permanent resident status exempted from the obligation to report overseas financial accounts?

A. If a person with U.S. permanent resident status who falls under ‘overseas Korean’ as defined by Article 2 (1) of the Act on the Immigration and Legal Status of Overseas Koreans has resided in Korea for no longer than one year during the two year period leading to the last day of the relevant year subject to reporting overseas financial accounts, he/she shall be exempted from the obligation to report overseas financial accounts in accordance with the Adjustment of International Taxes Act (before the amendment to Act no. 13553 on Dec. 15, 2015).

Source: National Tax Service (Jun. 27, 2016)

Q. What is the method of depreciation for goodwill classified as a capital deduction item?

A. If a company that acquired assets from a special related person evaluated goodwill as prescribed by Article 12 (1) of the Enforcement Rule of the Corporate Act and accounted for the goodwill as surplus capital, the goodwill can be included in deductible expense, in accordance with Article 19 Subparagraph 5-2 of the said Enforcement Decree. Also, if the value of goodwill that the company appropriated in its books under K-IFRS is below the market value, the difference in value can be included in deductible expense by means of return adjustment when calculating income for the business year. In this case, such value shall be within the scope of the depreciation amount computed in accordance with mutatis mutandis application of depreciation-related provisions (i.e., Article 24 or 34 of the Enforcement Decree of the Corporate Tax Act), as prescribed by Article 19 Subparagraph 5-2 of the same Enforcement Decree.

Source: National Tax Service (Aug. 16, 2016)
Q. If a company that is a small-and-medium sized enterprise invested in machinery equipment, is the company eligible for tax credits for employment-creating investment?

A. Tax credits for employment-creating investments as prescribed by Article 26 of the Restriction of Special Taxation Act shall not apply if the small-and-medium sized enterprise invested in machinery equipment that has been used.

Source: National Tax Service (Jul. 12, 2016)

Q. A limited liability partnership (LLP) established in the U.S. and the U.K. opened a foreign legal consultant office in Korea. Is the office recognized as the foreign company’s domestic place of business?

A. Yes. A foreign legal consultant office established in Korea by the LLP in accordance with the Foreign Legal Consultant Act to provide foreign legal services shall be considered the foreign company’s domestic place of business as prescribed by Article 94 of the Corporate Tax Act.

Source: Ministry of Strategy and Finance (Jan. 29, 2013)

Q. Is pension as prescribed by the Military Pension Act considered social security pension under Article 18 (4) of the Korea-Canada Income Tax Convention?

A. If a non-resident Korean who is a resident of Canada receives military pension as prescribed by the Military Pension Act from Korea, the pension is considered ‘benefits arising pursuant to the social security legislation of a Contracting State and paid to a resident of the other Contracting State’ as prescribed by Article 18 (4) of the Korea-Canada Income Tax Convention.

Source: National Tax Service (Mar. 24, 2016)

Q. Can the amount of waived bond be written off as bad debt in the following case?

A. A domestic company operating an insurance business as its main business partially waived bonds for early collection of debt under a contract and recorded the amount of waived bonds as expense. In the process of tax adjustment, the amount was not included in deductible expense, and corporate tax base and tax amount were filed accordingly. However, if there is a justifiable reason for the bond waiver, the waived amount can be included in deductible expense of the business year in which the bond was waived by filing a request for correction as prescribed in Article 45-2 of the Framework Act on National Taxes.

Source: National Tax Service (Aug. 26, 2016)

For more information, please contact the International Tax Resource Management Office of the National Tax Service (82-44-204-2873~4).