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

Q. How is distributable profit related to losses on capital reduction calculated when computing deemed gift tax on profits earned from related-party transaction?

A. ‘Distributable profit’ in Article 34-2 (13) of the Enforcement Decree of the Inheritance Act and Gift Tax Act shall be as defined by Article 86-2 (1) of the Enforcement Decree of the Corporate Tax Act. When computing distributable profit, surplus profit offset by losses on capital reduction in accordance with the accounting standards in Article 79 Subparagraph 1-2 of the Enforcement Decree of the Corporate Tax Act shall not be included in distributable profit.

Source: National Tax Service (Aug. 30, 2016)

Q. What is the scope of ‘vehicles for business use’ and how can the related expenses be recognized as loss depending on whether the company has a business auto insurance?

A. A domestic company’s passenger vehicles to which Article 27-2 of the Corporate Tax Act applies refers to those that fall under Article 1 (2) 3 of the Individual Consumption Tax Act excluding passenger vehicles used for the purpose of making profit by companies operating a business in Article 19 of the Enforcement Decree of the Value Added Tax Act, a facility leasing business as defined in Article 2 Subparagraph 9 of the Specialized Credit Finance Business Act, or a business classified as a funeral home and funeral related business under the Korea Standard Industrial Classification. Also, where a company does not have an auto insurance that only insures drivers who are the company’s executive or employees, or others who drive the car for the company’s business under a contract (business auto insurance) for the full business year (in the case of leased vehicles, the lease period during the business year shall apply), income for the business year shall be calculated in accordance with Article 50-2 (4) 2 of the Enforcement Decree of the Corporate Tax Act.

Source: National Tax Service (Aug. 30, 2016)

Q. Does separate accounting apply only to income statements?

A. A business that intends to receive tax reduction or exemption in accordance with the Restriction of Special Taxation Act should separately account the assets, liabilities, and profit/loss of businesses subject to tax reduction or exemption and other businesses. However, common gains and common losses that cannot be divided by business shall not be separately accounted, and proportional divisional calculation shall apply instead in accordance with Article 76 (6) and (7) of the Enforcement Rules of the Corporate Tax Act.

Source: National Tax Service (Aug. 31, 2016)
Q. When a person with a special relationship with a shareholder of a company provides interest-free loans to the company, is gift tax levied?

A. Where a specially related person of a shareholder of a specific company as prescribed by Article 41 (1) of the Inheritance Tax and Gift Tax Act (amended to law no. 9924, Jan. 1, 2010) provides a loan to the company free of interest or at an interest rate lower than the reference interest rate, profit calculated in accordance with Article 41-4 of the same Act shall be deemed the value of property donated to the shareholder of such specified country, as prescribed by Article 31 (3) and (6) of the Enforcement Decree of the Act.

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

Q. When calculating an employee’s retirement income, how can the service period be determined in the following case?

A. An employee of an overseas affiliate A of a multinational company transferred to the Korean branch of the company’s other overseas affiliate B which has direct and indirect investment relations with A. The employee later retired from the Korean branch. In this case, if the employee’s transfer to the Korean branch of B is not considered ‘actual retirement’ as prescribed by Article 43 (1) 2 of the Enforcement Decree of the Income Tax Act and if the period of service at A was included when calculating the final retirement payment, the service period at A shall be included in the employee’s total service period, in accordance with Article 105 (1) of the Enforcement Decree of the Income Tax Act.

Source: National Tax Service (Aug. 11, 2016)

Q. Can a separated business division be considered an independent business division?

A. Where ‘a business division formed only with stocks, etc. and assets and liabilities related to such stocks, etc.’ as prescribed by Article 82-2 (2) 3 of the Enforcement Decree of the Corporate Tax Act is separated, such separation shall not be deemed separate as a business division capable of operating its business as an independent business division as prescribed by Article 46 (2) 1 (a) of the same Act. However, if ‘a business division formed only with stocks, etc. that the divided corporation held for the purpose of control (i.e., stocks owned for the purpose of control as prescribed by Article 41 (3) of the Enforcement Rules of the Corporate Tax Act) on the day immediately preceding the registration date of the division and assets and liabilities related to such stocks, etc.’ as prescribed by Article 82-2 (3) 1 of the Enforcement Decree of the Act is separated, it shall be deemed that the business division is separated as an independent business division that is capable of operating its business.

Source: National Tax Service (Sep. 30, 2016)