



Overview of the Tax Audit and Tax Appeal Process in Korea

As the overview of the tax system in Korea was discussed in the previous issue, this issue will provide an overview of the process of how to resolve a tax controversy if there is a discrepancy between the taxpayer and the National Tax Service (“NTS”) in Korea. Typically, tax controversies arise in tax audits by NTS. The statute of limitation in Korea is 5 years, thus a tax audit is conducted every four to five years in general unless there is a specific reason or circumstance that requires more frequent examinations.

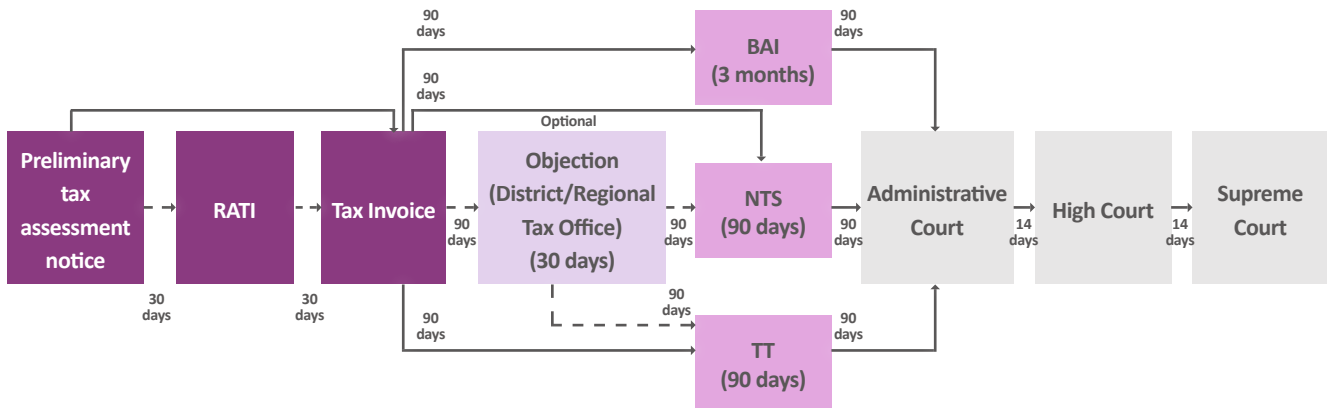
There has been a growing trend to make the tax audit procedures more transparent and taxpayer friendly, which is shown in the recent tax laws changes effective January 2021. For example, NTS is required to disclose more detailed information, such as years subject to audit, along with the taxpayer’s name and address, length of audit, etc., to the taxpayer in the notification process. Further, such tax audit notice is required to be delivered 15 days prior to an audit along with a request for information listing the documents to be provided by taxpayers. After receiving the tax audit notification, tax audits may be conducted by either a desk audit (review of the documents) or a field audit (an auditor would visit the premise). A field audit is more

common and would last from a few weeks to a few months depending on the size of the companies and the issues involved. At the field audit, auditors would communicate with taxpayers time to time about the findings and issues.

After the audit, the auditors are required to give the taxpayer a notice of tax audit results, which will include information such as the tax adjustment items giving rise to potential tax liability, relevant tax law provisions, specific facts and circumstances for the adjustments. Again, this is an improvement from before where details such as the basis for tax adjustments were not even included in the tax audit results.

If the taxpayer agrees with the items on the notice of tax audit results, then the tax authority will issue a final assessment. However, if the taxpayer does not agree with the suggested assessment and believes it is non-compliant with the tax law, the taxpayer may appeal by filing an objection to the head of a regional or district tax office within 30 days of receiving the notice of tax audit results, but before the issuance of a tax invoice. This is also known as Review for Adequacy of Tax Imposition (“RATI”), which is a procedure that taxpayers may exercise for contesting the legality of taxation prior to the issuance of a tax invoice.

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The regional or district tax office is required to issue a decision on RATI within 30 days from the date the taxpayer submits the RATI application.

Once the taxpayers are in receipt of the tax invoice, taxpayers may choose to pay the tax assessment prior to proceeding with the appeals process because the penalties and interests can be quite burdensome if the taxpayer does not succeed in the appeals process. There is a flat rate of 3 percent of the amount of tax due as a penalty if the tax is not paid and the interest (currently 9.125% p.a. may be reduced under the current proposed tax amendments) would start accruing. If the taxpayers are successful in the appeals, tax paid will be refunded with interest (currently at 1.2% p.a.).

After receipt of the tax invoice, taxpayers have the option to object at the district or regional tax office once more before appealing to one of the three institutions. Thereafter, the taxpayer may appeal the tax assessments by filing an application with one of the three institutions within 90 days from the receipt of the tax invoice: NTS, Tax Tribunal (“TT”) or Board of Audit and Inspection (“BAI”). Majority of taxpayers take the route to appeal to the TT because it is an appeals bureau that specializes in tax and is independent from NTS as it is under the prime minister’s office, therefore is viewed as the most neutral and suitable institution. BAI is an institution that audits all government agencies and offices, thus, as it is not specialized in tax like the TT, the outcome from BAI can be rather unpredictable. An appeal is rarely, if at all, made to the NTS, as it is the same government institution that issued the tax assessment, thus, it is regarded to lack neutrality. Even though these

institutions are required to render a decision within 90 days from the time the taxpayer submits the appeals application, in practice, it can take up to a year. The decision rendered by the TT is binding on the tax authorities, but not on the taxpayer, i.e., if taxpayers win the case at the TT appeal, that is the end of the case for all parties and the tax authorities are not allowed to appeal. On the other hand, if the decision rendered by the TT is not favorable, the taxpayer can appeal the decision by filing a complaint within 90 days from the date of the TT decision with the administrative court or district court depending on the jurisdictional location.

For this month’s issue of Invest Korea, we touched upon a few basic topics related to the procedure of tax controversy resolution in Korea. There are many factors to consider when being audited by the tax authorities and one should always consider seeking professional help.



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