Newly Issued Tax Interpretations

Under the Korea–U.S. Tax Treaty, whether royalties for the use of a patent that is registered outside Korea constitute Korean-source royalty income

A U.S. company licensed five patents registered in the U.S. to a Korean company and received royalty payments in 2023. The issue is whether, despite the introduction of a provision under the Corporate Income Tax Law (“CITL”) that treats royalties for patents not registered in Korea as Korean-source income, such royalties may be excluded from Korean-source royalty income under the Korea–U.S. Tax Treaty, which takes precedence over domestic tax law.

The Tax Tribunal disagreed. While it recognized that the Korea–U.S. tax treaty uses the “place of use” as the standard for determining the source of royalty income, it noted that the treaty does not specify how that place should be determined. In the absence of such guidance, the Tribunal held that the determination should be made based on Korean domestic law. Pursuant to Article 93(8) of the CITL, patents registered overseas but used in Korea for manufacturing, sales, or similar purposes are deemed to be used in Korea, regardless of domestic registration status. Additionally, Article 93(10)(c) provides that damages paid in Korea for infringement of such patents are treated as Korean-source income.

Based on these provisions, the Tribunal concluded that royalties paid for the use of foreign-registered, Korea-unregistered patents in Korea also constitute Korean-source income (Josim 2025Jung0213, 2025.04.18; see also Josim 2022Jung5865, 2022.10.06).

Keynote: The Tax Tribunal has consistently maintained the position that royalties for the use of patents not registered in Korea constitute Korean-source income even in cases prior to the introduction of Article 93(8)(c) CITL (Josim 2017Jung2806, 2018.10.02). In contrast, the courts have consistently ruled that, under the Korea–U.S. Tax Treaty and the territoriality principle of patent law, royalties for the use of patents not registered in Korea cannot be treated as Korean-source income (e.g., Supreme Court Decision 2018Du36592, 2022.02.10).

However, in the absence of any court rulings applying the amended provision of the CITL, it remains to be seen whether the judiciary will depart from its previous interpretation in future cases.

Korean Tax Tribunal denies VAT zero-rating for services with core activities performed in Korea

A Korean company ("A") collected blood samples from cancer patients in Korea and sent them to a Japanese Company ("B"). Company B, through another Company C, cultured immune cells from the blood and sent it back to Company A. Company A then injected the cultured immune cell blood into the patients in Korea and received payment for the immune cell therapy service.

Company A argued that the entire service should be zero-rated for VAT purposes. Although it carried out intermediary services in Korea—such as arranging, dispatching, blood collection, transportation, and injection—it claimed that it was merely supporting Company B, and that the essential and substantive part of the immune cell therapy occurred in Japan. Accordingly, under the Value-Added Tax Law ("VATL"), Company A asserted that the place of supply should be deemed to be outside Korea (i.e., in Japan), and the service should thus qualify for VAT zero-rating.

However, the Tax Tribunal rejected A's arguments. Citing Article 20(1)(1) of the VATL, it held that the place of supply for service is determined based on where the service is performed. If the essential part of the service is carried out in Korea, the place of supply is considered domestic. In this case, the Tribunal found that the core medical activities—specifically blood collection and injection—were conducted in Korea, and as such, it concluded that the essential part of the service was performed in Korea, and the service was therefore not eligible for VAT zero-rating (Josim 2024Se2641, 2025.03.26).

Keynote: The place of supply for services is determined based on where the essential and core activities are performed. Even if elements of the service occur abroad, if the main activities are performed in Korea, the supply is deemed domestically supplied and not eligible for VAT zero-rating (Supreme Court Decision, 2014Du13829, 2016.02.18).

Calculating method for ownership percentage under Korea-Canada Tax Treaty when a Canadian pension fund, as the beneficial owner of Korean-source capital gains, invests through investment vehicles

Tax ruling (Gijun-2024-Beopgyugukjo-0232, 2025.03.13) addressed how to calculate the ownership percentage when the Canadian pension fund—the beneficial owner of Korean-source capital gains— invests in and disposes of shares of a Korean company through a chain of investment vehicles, for the purpose of determining the capital gains exemption under the Korea-Canada Tax Treaty.

The Canadian pension fund's investment was structured through multiple layers, including offshore investment vehicles, partnerships, and Korean special purpose companies. For the purpose of determining Korea's taxing rights on capital gains arising from the transfer of shares in the Korean company under Article 13(5) of the Korea–Canada Tax Treaty, the tax authority ruled that the ownership percentage of the transferor should be calculated based on the Canadian beneficial owner. Furthermore, the ownership percentage of the Canadian beneficial owner is determined by multiplying the ownership percentages at each tier of the investment structure. If there are multiple parallel partnership routes, the ownership percentages from each path should be aggregated to calculate the beneficial owner's total ownership percentage.

Keynote: The above interpretation would be meaningful in that it confirms the ownership percentage may be determined based on a reasonable approach, irrespective of the method prescribed in the CITL—even though the Korea–Canada tax treaty does not explicitly prescribe how to calculate the ownership percentage for exemption eligibility.

For reference, under the CITL, when a foreign corporation (as the beneficial owner) invests in and subsequently disposes of listed shares in Korea through an investment vehicle, a specific method is prescribed to determine whether the 25% ownership threshold for capital gains tax exemption is met. In particular, when a foreign beneficial owner makes an indirect investment through an investment vehicle, the beneficial owner's ownership in the vehicle is not taken into account. Instead, only the investment vehicle's ownership percentage in the listed Korean company is deemed to represent the beneficial owner's interest.

Withholding tax rate applicable to software license royalty paid by a Thai company

A domestic (Korean) company granted a license to use its ERP program to a Thai company and received payment in return. The Thai tax authority determined that the payment did not constitute “software royalties” subject to the reduced 5% withholding tax rate under the Korea-Thailand tax treaty, but rather constituted the payment for the “use of commercial equipment” developed by a foreigner, and thus applied a 15% withholding tax rate.

The Korean company inquired with the Korean National Tax Service (NTS) as to whether the payment received from the Thai company qualified as royalty income under Article 12(3)(a) of the Korea-Thailand Tax Treaty—specifically as software royalties subject to the reduced 5% tax rate. The NTS responded that the payment does indeed constitute software royalties and is therefore subject to the 5% withholding tax rate (Seomyun-2024-Gookjesewon-3149, 2025.03.11).

Keynote: This case involves the Thai tax authority applying a 15% withholding tax on payments made to a Korean company for the use of an ERP program, treating the payments not as software royalties (subject to 5% withholding tax rate) but as payments for the use of commercial equipment. The NTS confirmed that such withholding taxation by the Thai authorities is not consistent with the Korea–Thailand Tax Treaty.

The NTS has consistently held that if foreign taxes paid are not properly imposed under applicable tax treaties or other relevant laws, then the domestic (Korean) taxpayer cannot claim a foreign tax credit (e.g., Seomyun-2022-Gookjesewon-4793, 2022.12.27). Accordingly, the Korean company should consider requesting the NTS to initiate a mutual agreement procedure (MAP) with the Thai tax authority as a means of relief.

Whether a foreign company’s capital contribution of Korean shares at below fair market value (FMV) constitutes as a deemed gift, thereby giving rise to “other income” under the Corporate Income Tax Law (CITL).

A foreign corporation received 100% of the shares of a Korean unlisted company from its U.S.-based parent through a contribution in-kind. The value of shares issued to the parent company was significantly lower than the FMV of shares of Korean company transferred. Korean tax authority treated the difference as income arising from a deemed gift of Korean assets and assessed it as Korean-source “other income” under Article 93(10)(c) of the CITL.

However, the Tax Tribunal disagreed. It held that, under established principles of tax law, statutory provisions must be interpreted according to their plain meaning unless explicitly stated otherwise. The CITL itself does not define the term “gift,” and applying the definition under the other tax law (i.e., Inheritance and Gift Tax Law) is inappropriate in this context. Furthermore, it should be noted that the Enforcement Decree of the International Tax Coordination Law expressly excludes transfers made for consideration substantially below FMV from the definition of taxable gifts. As the transaction was part of a legitimate capital restructuring with no evidence of gratuitous intent, the Tribunal concluded that the deemed gift provision under the CITL should not apply (Josim 2022Se7930, 2025.03.31).

Keynote: This decision is regarded as a faithful interpretation of the statutory language, as it does not unreasonably broaden the scope of Korean-source income under the CITL.

Whether employee benefit points under a flexible benefits plan constitute taxable salary income under the Individual Income Tax Law (IITL)

The Seoul Administrative Court ruled that, citing the Supreme Court’s case on December 24, 2024, the employee benefit points constituted compensation reasonably linked to the services provided by employees. Accordingly, the Court found that such points qualified as taxable salary income under the IITL (Seoul Administrative Court Decision, 2022Guhap51956, 2025.02.18).

The Court observed that, despite certain limitations—such as restrictions on eligible purchases, non-transferability, and the inability to carry forward unused points—employees were nonetheless able to freely obtain goods and services, thereby receiving substantial economic benefit. Furthermore, the Court clarified that the Framework Act on Labor Welfare excludes only basic working conditions such as wages from the concept of “labor welfare,” and does not exclude all forms of welfare-related compensation like benefit points. Lastly, the Court held that differential tax treatment of benefit points provided to public officials does not violate the constitutional principle of tax equity, as such distinction is reasonably justified.

Keynote: Following the Supreme Court decision (2024Du34122, 2024.12.24), which held that benefit points under a flexible benefits plan constitute taxable income under the IITL as compensation for labor, this Court ruling also affirms that companies implementing such flexible benefits plans are required to include the value of benefit points provided to employees as taxable income subject to withholding.

Whether taxes paid by a foreign branch are included in actual foreign taxes paid under controlled foreign corporation (CFC) rules

A Dutch company paid both corporate tax and branch tax in Kazakhstan on income earned by its Kazakh branch. Although this branch income was excluded from the Dutch company's taxable income under Dutch tax law, the Korean tax authority viewed that the taxes paid in Kazakhstan qualified as "foreign taxes paid in a non-residence country" for purpose of CFC scope determination under Article 62 of the Enforcement Decree of International Tax Coordination Law. As a result, these taxes should be included in the calculation of the actual foreign taxes paid under CFC rules (Seomyeon-2024-GukgyuGukjo-0250, April 28, 2025).

Korea Tax Updates

The previous May newsletter content has been updated to reflect recent discussions with the relevant department at the NTS as follow:

VAT Monthly Transaction Reporting Obligation Expanded to Foreign Online Platform Service Providers and Payment Gateway Service Providers

Article 75 of VATL requires certain value-added telecommunications service provider that provides online marketplace platform service, a payment gateway service provider, a digital financial service provider or a specialized foreign exchange dealer (i.e., digital intermediary service providers) to submit monthly transaction details on a quarterly basis (e.g., information regarding the underlying transaction party, number of transactions, transaction amount, etc.) to the Korean tax authority by 15th of the month following the end of each calendar quarter (when the seller in an individual transaction is a foreign company).

Under the VATL amendment in March 2025, foreign platform operators have also been added to the parties obligated to submit the above-mentioned transaction information. As a result, foreign platform operators that were not previously registered in Korea are now required to submit information on transactions to the Korean tax authorities where the seller is a Korean resident/company.

According to discussions with the relevant department at the NTS, the NTS is currently working on a system update, aiming for completion by the end of June. It appears that the

NTS is establishing an environment in which foreign operators will be able to access the NTS website and submit the required information. Specific details regarding registration obligations and reporting procedures are expected to become clear once the ongoing system update is finalized.

If the taxpayer does not comply with submission of information, a fine of up to KRW 20 million may be imposed.

Upcoming Tax Reporting Reminder

• Country-by-Country Report Notification due by June 30, 2025 for calendar year taxpayers (due within 6 months from end of business year)

• Submission of Statements of International Related Party Transactions, Summary Income Statements of Foreign Related Parties and Transfer Pricing Calculation Method Reports due by June 30, 2025 for calendar year taxpayers (due within 6 months from end of business year)

• Submission obligation of transaction statements by foreign online platform service providers and payment gateway (PG) companies: to be submitted by October 15, 2025.

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