KOREA

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INTERNATIONAL DEVELOPMENTS

1. 1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

Korea has long been endeavoring to adopt tax policies in line with global trends and OECD guidelines, which also include BEPS, and numerous tax-related amendments were made reflecting such efforts. While there are no particular changes in the past few months, the following should be taken into consideration in M&A deals.

In cases of share deals, in principle, a transferor must pay a capital gains tax on capital gains, but a transferee is not required to pay any special tax. If the transferor is a corporation, the corporation must pay the corporation tax and as of 1 January 12018, the corporate tax rate was raised for cases where the taxable income exceeds KRW 300 billion. The changed corporate tax rate is 25% (previously 22%) on corporate income over KRW 300 billion. However, if a transferee becomes an oligopolistic shareholder (those whose total number of stocks held or total amount of investment made exceeds 50/100 of the total number of stocks issued by the relevant corporation or the total amount of investment in the relevant corporation and who exercise de facto rights to such stocks or investments. Framework Act on Local Taxes, Article 47) of the target company with assets subject to acquisition tax (e.g. real property) through transfer of existing shares, sometimes a transferee may be required to pay acquisition tax, etc.

In cases of asset deals, while a transferor must pay VAT on asset transfer gains in individual asset transfer cases (where, at the transferor or transferee's discretion, only selected assets or liabilities are transferred), no VAT is required in comprehensive asset transfer cases (where substantially all the business-related rights, assets, liabilities and employees of a company or a division of a company are transferred in a comprehensive manner, such that the nature and the continuity of the business are sustained after the transfer). However, a transferee must pay acquisition tax, etc. The National Tax Service in Korea is currently reviewing the appropriateness of transfer pricing in cases of related party M&A transactions in depth.

2 WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

In an effort to reflect the BEPS Action plan, the Korean Government has amended the relevant tax regulations including the *Adjustment of International Taxes Act*, ("AITA"), which is in line with OECD guidelines.

The relevant existing statutes provide the following provisions for taxation:

- Imposing taxes upon the actual beneficiary, not a nominal holder
- Imposing taxes associated with transfer pricing based on the arm's length price
- Interests paid to a foreign controlling shareholder will be deemed as a dividend and the relevant tax will be imposed accordingly (thin capitalization rule)
- In cases where a local resident invests in a foreign corporation having its headquarter in a country which taxes 15% or less of the actual income generated, the amount from a distributable reserve income of such foreign corporation at the end of each fiscal year belonging to the local resident will be deemed as a dividend paid to the local resident and will be taxed accordingly.
- Exchanging tax and financial information between nations

In particular, pursuant to the amendments to the AITA, a taxpayer engaged in an international transaction with a foreign related party must file both an International Transaction Schedule and an International Transaction Information Integrated Report with the competent tax authorities. Also, the BEPS Action Plan will be reflected continually in the relevant rules and regulations in the future.

The International Transaction Information Integrated Report is consisted of an Integrated Corporate Report, an Individual Corporate Report and an Country by Country Report("CbCR") (previously, the AITA only required an Integrated Corporate Report and an Individual Corporate Report).

The AITA states that the specific scope, method, procedure etc. of the CbCR submission will be prescribed by presidential decree (Article 11.4) and the relevant AITA Enforcement Decree (Article 21-2) was amended on 13 February 2018.

According to the AITA Enforcement Decree, in principle, if a taxpayer is a domestic parent company or a taxpayer with foreign controlling shareholders and meets elements set forth in a. or b. below, the CbCR must be filed.

a. Domestic parent company (ultimate parent entity of multinational enterprise group)

If the sales exceed 1,000 billion won according to its consolidated financial statements for the immediately preceding tax year

b. Taxpayer with foreign controlling shareholders

If the sales exceed the amounts regulated in the relevant country or 0.75 billion euro according to its consolidated financial statements for the immediately preceding tax year

1) the laws of the country where such controlling shareholders are located do not require CbCR submission; or

2) there is no tax treaty between Korea and such country etc. whereby the CbCR can be exchanged

The CbCR must include country-by-country taxpayer and related corporation revenue details, country-by-country before-tax profits and losses, country-by-country tax paid and capital, etc. The domestic parent company and domestic subsidiary/branch with the foreign controlling shareholders must submit material related to the person obligated to submit the CbCR within twelve months from the end of the business year to the tax office with jurisdiction over the place of tax payment.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES BETWEEN AN ACQUISITION OF SHARES AND AN ASSET DEAL IN YOUR COUNTRY?

In the case of a share deal where there is a transfer of shares, while a transferor must pay a capital gains tax on capital gains from a share transfer, a transferee is not required to pay any special tax.

An asset deal is classified into two categories: an individual asset transfer and a comprehensive asset transfer. A transferor must pay a capital gains tax and VAT on asset transfer gains in individual asset transfer cases, whereas no VAT is required in comprehensive asset transfer cases. In the case of an asset deal, a transferee must pay acquisition tax, registration tax, etc.

a. Share deal

Tax advantages:

As the target company continues to exist and the only change is a change in its shareholder structure, tax payment records of the target company may remain the same. Furthermore, other than a small sum of tax such as a securities transaction tax, a transferee is not required to pay any special tax.

Tax disadvantages:

The target company's tax records may remain the same and a transferee must bear all unrecorded liabilities, contingent liabilities, etc. of the target company.

b. Asset deal

Tax advantages:

As a transferee only takes over assets of the target company, it may block out tax records, unrecorded liabilities and contingent liabilities of the target company.

Tax disadvantages:

In addition to a capital gains tax on asset transfer gains, there may be additional taxes such as VAT, acquisition tax, etc. as well.

BUY-SIDE

4. WHAT STRATEGIES ARE IN PLACE, IF ANY, TO STEP UP THE VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS IN CASE OF SHARE DEALS?

A stock acquisition does not change the fiscal identity of the target company. Hence, the value of the tangible and intangible assets of the target company remains the same. As such, the company's assets and liabilities will not acquire a different tax status. The target company will continue to depreciate or evaluate its assets as it did before the acquisition. Provided, however, a transferee, a new shareholder, may undertake a reevaluation of the value of the tangible and intangible assets through legal procedures. In accordance with Assets Reevaluation Act, the physical status of the company is reevaluated when there is a difference between the book value and the market value due to the rise in prices etc. However, reevaluation is exceptional and the difference according to reevaluation may not be seen as a taxable income.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL AND SIMILAR INTANGIBLE ASSETS IN YOUR COUNTRY?

The term goodwill refers to the recognized right having an economic value due to the target company's capacity to secure excess earnings, in comparison with other enterprises in the same industry, by having an exclusive profit opportunity such as a favorable business relationship. Generally, such goodwill is evaluated by yield capitalization approach, sales comparison approach and cost approach, and, in principle, such goodwill calculated by the said approaches is not amortized but only damages thereof are evaluated annually. In special cases such as the case of an acquisition through spin-off and merger, it may be deducted for tax purposes via amortization within a period of five years.

6. WHAT ARE THE LIMITATIONS ON THE DEDUCTIBILITY OF INTEREST EXPENSE? ARE THERE SPECIAL INTEREST LIMITATIONS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

In both share and asset acquisition cases, the thin capitalization rule is applicable to any borrowing from a "foreign controlling shareholder" by a domestic corporation. The scope of "foreign controlling shareholder" of a domestic corporation will be any which falls under any of the followings as of the end of each business year:

- A foreign shareholder who directly or indirectly owns 50% or more of voting shares of a domestic corporation
- A foreign corporation, 50% or more of whose voting shares are directly or indirectly owned by a foreign shareholder described above

The debt/equity ratio of 6:1 applies in the case of a foreign parent (or head office) in financial industry and the debt/equity ratio of 2:1 applies in all other cases.

If the Korean subsidiary's borrowing from a foreign controlling shareholder exceeds the thin cap rule limitation, the interest expenses for the excessive portion paid to foreign controlling shareholder will be disallowed as an interest expense deduction, and treated as dividend distribution to foreign controlling shareholder (subjecting it to dividend withholding tax). The disallowed interest expense will increase the Korean subsidiary's corporate income and the corresponding corporate income tax.

7. WHAT ARE COMMON STRATEGIES TO PUSH-DOWN DEBT ON ACQUISITIONS?

There are numerous strategies to push down debt in acquisitions in Korea and one of them is a merger between an acquisition vehicle and the target company. In this method, the target company takes up loans borrowed by the acquisition vehicle upon completion of the merger. Besides such merging tactic, an acquisition vehicle finances based on the target company's assets and such collateral-based debt is repaid subsequent to the acquisition in some other M&A transactions. It would be important to note that, as the directors of the target company who approved the said merger may be held liable in certain cases, a careful legal review should be done prior to implementation of such strategy in order to avoid a breach of fiduciary duty (there are many recent court cases where directors of targets were found to be liable both criminally and civilly for breaching their fiduciary duties).

Due to the thin capitalization rule limitation discussed under question 6 above, in the case where a foreign controlling shareholder wishes to merge and acquire a domestic company, the debt/equity ratio would need to be structured at the optimal level. More specifically, it would be important to avoid high levels of debt when structuring the deb/equity ratio. Diversification of the composition of investors by attracting third-party investors, domestic investors and financial investors and strategic investors that are not foreign controlling shareholders may be one of the ways to achieve this purpose.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

The following shows some tax incentives for equity financing:

- An investment tax credit may be available to certain industries such as R&D industry
- Taxes such as a corporate tax may be reduced or exempted in certain foreign investment zones
- In the case of equity financing, a limit placed on expenses for tax purposes may be increased (e.g. entertainment expenses)

9. ARE LOSSES OF A TARGET COMPANY AVAILABLE AFTER AN ACQUISITION IS MADE? ARE THERE ANY RESTRICTIONS ON THE USE OF SUCH LOSSES?

A loss carryforward of the target company may be deducted continually in calculating a corporate tax. Specifically, in the case of a share deal, a change of control of the target company does not affect the use of a loss carryforward. In accordance with Corporate Tax Act, a loss carryforward can be used for 10 years and if the target company is a small medium sized company, it can deducted 100% of the loss carryforward amount from the taxable income. If the target company is not a small medium sized company, 60-80% of the loss carryforward amount from the taxable income.

10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?

According to the Korean tax law, tax investigation is conducted every five years since the status of limitations of tax is five years in Korea. To this end, it would be necessary to review statements of tax adjustments, status of tax payment, etc. for the past three or five years. Furthermore, it would also be necessary to find out whether there was any tax investigation conducted by the National Tax Service and if so, the details and outcome thereof would need to be reviewed and analyzed as well.

For instance, as corporate accounting based on K-GAAP and K-IFRS and tax accounting have some differences in accounting standards, reviewing statements of tax adjustments will enable you to verify such differences. In regard to review of the status of tax payment, as this shows a history of tax payments made by a company, it will tell you whether the company is in compliance with its tax payment obligations.

11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?

In the case of a share deal, there may be indirect taxes such as stamp duty, securities transaction tax, etc. and in the case of an asset deal, there may be indirect taxes such as stamp duty, VAT, etc. In the case of a share deal, the securities transaction tax is generally levied on the transferor at a rate of 0.3% on the sale of listed shares and it may be increased to 0.5% if the shares are unlisted. The stamp duty is levied on agreements relating to the creation, transfer or alteration of rights to property in Korea. The stamp tax ranges from KRW 50 to KRW 350,000 depending on the type of taxable document.

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?

In both asset and share deal cases, so long as acquisition costs incurred are within the normal range, they may be recognized as expenses and tax deductible.

13. CAN VAT (IF APPLICABLE) BE RECOVERED ON ACQUISITION COSTS?

In the case of an asset deal, especially an asset deal through an individual asset transfer, VAT will be imposed. In the case of an individual asset transfer, a transferor should withhold VAT at 10% (“Sales VAT”) from a transferee and remit the collected Sales VAT to the relevant tax authority. If a transferor has paid a VAT in connection with the purchase of asset (“Purchase VAT”), the amount may be recovered by deducting the Purchase VAT from Sales VAT. A comprehensive asset transfer is exempt from VAT and no VAT is payable on the sale of shares.

14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION OF A DOMESTIC COMPANY BY A FOREIGN COMPANY?

The thin capitalization rule and VAT would need to be taken into account. Together with such, it would be necessary to prepare in advance and review the matters associated with a payment method of future dividends which will be paid out after acquisition of a domestic company by a foreign company, payment date, dividend tax, etc.

15. CAN THE GROUP REORGANISE AFTER THE ACQUISITION IN A TAX NEUTRAL MANNER THROUGH MERGERS OR A TAX GROUPING?

While a group may reorganize after an acquisition based on newly arising circumstances and tax considerations, a careful examination should be given taking into account benefits and costs thereof. Where a merged corporation is dissolved in the course of a merger, the assets of the merged corporation shall be deemed transferred to a surviving corporation. In such cases, capital gains or losses accruing from the transfer shall be included in the gross income or deductible expenses when the merged corporation calculates the amount of income for the business year in which the registration date of the merger falls and shall pay the corporate income tax.

Furthermore, in the case of qualified merger (a merger between the domestic corporations which have continued to operate their business for at least one year as of the registration date of the merger and where the value of the stocks, etc., of a surviving corporation or the parent corporation of the surviving corporation is at least 80/100 of the total costs of the merger received by the stockholders, etc., of a merged corporation in return for such merger), the capital gains or losses on a transfer may be deemed nil considering the net book value of assets as of the registration date of the merger of the merged corporation. In the case of above, the merger corporation does not pay the additional tax on the merger profit at the time of the merger since the assets of the merged corporation are considered to have been transferred as the book value. However, if the merger is not the case of qualified merger, the merger corporation shall include the profit or loss of the merger equally for 5 years. (Corporate Tax Act, Article 44, 44-2 and 44-3).

Therefore, in the case of merged corporation, the merger is distinguished from the transfer of assets and the profit or loss of the merger is not regarded as the gain or loss of the asset transfer. The taxation on profit and loss of the merger may be deferred for both qualified mergers and non-qualified mergers.

In principle, a tax grouping is not available. However, a domestic corporation that wholly controls another domestic corporation ("wholly-owning parent corporation" which holds 100% of the outstanding shares) and the other domestic corporation ("wholly controlled subsidiary") may apply the consolidated tax return system with approval of the commissioner of the competent regional tax office having jurisdiction over the place of tax payment of the wholly-owning parent corporation. (Corporate Tax Act, Article 76-8).

16. ARE THERE ANY PARTICULAR ISSUES TO CONSIDER IN THE CASE OF A TARGET COMPANY THAT HAS SIGNIFICANT REAL ESTATE ASSETS?

In the case where a transferee becomes an oligopolistic shareholder by acquiring the existing shares issued by the target company (if the transferee holds the existing shares issued by the target company exceeding 50%), such transferee is deemed to have acquired assets subject to acquisition tax such as real property owned by the target company by the transferee's equity ratio at the time of such share acquisition, and thus is required to pay the applicable acquisition tax. The acquisition of shares does not generally trigger acquisition tax. However, if a transferee and its affiliates collectively acquire, in aggregate, more than 50% of the shares in the target company, they will be deemed to have indirectly acquired those taxable assets through the share acquisition and will therefore be subject to deemed acquisition tax ("DAT"). The DAT payable is calculated at a rate of either 2% or 2.2% (including surtax) on the book value of the taxable assets in proportion to the percentage of shares acquired. In the event the target company fails to pay its corporate tax, VAT, etc., then such transferee who has become an oligopolistic shareholder will bear secondary tax liability to pay such applicable taxes.

Tax losses or historical tax liabilities are not transferred with the assets in an asset acquisition. In the case of an individual asset transfer, the transferee does not incur a secondary tax liability for any unpaid tax or tax liabilities of the transferor that relate to the transferred assets on the official transfer date. However, in a comprehensive asset transfer, the transferee assumes a secondary tax liability on any already fixed and determinable tax liabilities of the transferor on the official transfer date.

If the property of a transferor is insufficient to cover the money collectible by a local government in connection with the business for which tax liability has been determined before the date of business transfer in cases of business transfer and acquisition, a transferee (person who has comprehensively succeeded all rights and responsibilities concerning the business for each place of business and run a type of business the same as or similar to the business operated by the transferor at the place where the transferor has run the business) shall assume secondary tax liability for such shortage up to the limit of the price of property acquired (Framework Act on Local Taxes, Article 49).

17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

Under tax law, in principle, each company is a taxpayer liable for payment of the applicable taxes, and neither fiscal unity nor tax grouping is allowed in Korea. If a consolidated tax payment is available, the losses of any corporation or any fiscal year may be recognized as deductible expenses.

18. DOES YOUR COUNTRY HAVE ANY SPECIAL TAX STATUS SUCH AS A PATENT BOX FOR COMPANIES THAT HOLD INTANGIBLE ASSETS?

In Korea, tax support mainly focuses on R & D itself and the tax support for IP commercialization is insufficient. Currently, a small medium sized enterprises (“SMEs”) and medium-sized enterprises are allowed to reduce tax on technology transfer income and only SMEs are allowed to reduce tax on technology rental income.

For income derived by SMEs and medium-sized enterprises from the transfer of patents, etc. to a Korean national by no later than December 31, 2018, the tax amount equivalent to 50/100 of the income tax or corporation tax on the relevant income is reduced. The SMEs and medium-sized enterprises are regulated separately based on the type of industry, sales volume, and the number of employees. If a Korean national acquires a patent, etc. from another Korean national who holds the patent, etc. as a result of his/her own research and development by no later than December 31, 2018, such Korean national is entitled to deduct an amount calculated by multiplying the acquisition cost by 5/100 or 10/100 from income tax or corporation tax in the taxable year. If a SME grants a license for a patent, etc. obtained as a result of its own research and development by no later than December 31, 2018, such enterprise is entitled to an income or corporate tax reduction by the equivalent to 25/100 of the income tax or corporate tax levied on income accruing from the grant of such license (Restriction of Special Taxation Act, Article 12).

In this regard, a special tax status such as patent box is allowed in a limited way. For example, when a small medium sized company realize some revenue through a transfer of patent, it can have some benefits for tax purpose.

19. DOES YOUR COUNTRY IMPOSE ADVERSE TAX CONSEQUENCES IF OWNERSHIP OF INTANGIBLES IS TRANSFERRED OUT OF THE COUNTRY?

In principle, there are no adverse tax consequences.

SELL-SIDE

20. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY? WHAT, IF ANY, GAINS ARISING IN AN M&A CONTEXT ARE ELIGIBLE FOR SPECIAL TREATMENT?

A transferor of shares is required to pay capital gains tax on capital gains realized from the transfer of shares and local income tax. If the original acquisition price and transfer costs can be verified, those can be deducted by submitting the satisfactory evidence when calculating the capital gain. If a transferor is a non-resident or a foreign company having no domestic place of business, it must report and pay the amount due by the 10th day of the second month following the month in which the day of the share transfer payment falls to the competent tax authority. The corporate income tax rates applicable to domestic corporations and foreign corporations with a permanent establishment in Korea are 10% on corporate income of up to KRW 200 million, 20% on corporate income over KRW 200 million and up to KRW 20 billion, 22% on corporate income over KRW 20billion and up to KRW 300 billion and 25% on corporate income over KRW 300 billion. Capital gains upon the transfer of shares, earned by foreign companies without permanent establishments in Korea, are generally subject to withholding tax at a rate equal to the lesser of either 10% of the proceeds of the sale or 20% of the capital gains made, unless those gains are exempted by the relevant tax laws or an applicable double tax treaty which Korea has entered into with the foreign shareholders' country of tax residence. For the above corporation tax, the local income tax equivalent to 10% of the corporation tax amount will be added.

21. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES OR ASSETS ARE REINVESTED?

ere is no special benefit in respect to reinvestment other than the benefit for investment in general. In case of investing in productivity improvement facilities, energy conservation facilities and environmental preservation facilities in accordance with the Restriction of Special Taxation Act, the amount calculated by multiplying the investment amount by a certain percentage may be deducted from the tax amount. In addition, if a foreign investor invests in a free economic zone under the Special Act on the Designation and Operation of Foreign Investment Zones and Free Economic Zones in accordance with the Foreign Investment Promotion Act, there may be a case where a certain amount of tax is deducted for a certain period of time. However, tax benefits for such foreign investment will be gradually abolished for the purpose of fair taxation.

22. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

In principle, in cases of small and medium-sized company, there are no special requirements or regulations in respect of a holding company. On the other hand, large-sized enterprises (e.g. a company with assets of KRW 500 billion) are specially regulated by the *Monopoly Regulation and Fair Trade Act*. A holding company means a company whose main business is to control the business contents of a domestic company through the ownership of shares (including equity) and whose total assets are equal to or greater than the amount prescribed by the Presidential Decree (KRW 500 billion). In this case, the main business standard is in accordance with Presidential Decree of Monopoly Regulation and Fair Trade Act, Article 2-1-1 and Enforcement Decree of the Monopoly Regulation and Fair Trade Act, Article 2 and the Restriction of Special Taxation Act defers the corporate tax and capital gains tax on the transfer profits that may arise when a holding company is established or conversion into a holding company (Restriction of Special Taxation Act, Article 38-2). The holding company may deduct its corporate tax by not including the certain dividend amount received according to its holding share ratio from the subsidiary (Corporate Tax Act, Article 18-2).

23. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

A tax break relating to VAT (not subject to VAT for the case of comprehensive asset transfer), acquisition tax (excluded from being taxed unless an oligopoly shareholder), etc. will be given to certain mergers/spin-offs recognized under the Commercial Act, tax laws, etc., and other matters such as amortization of goodwill should be reviewed for tax purposes.

A substantial part of the merger-related taxes may be mitigated or deferred, if the merger is considered to be a qualified merger. The requirements for a qualified merger are i) both companies (i.e. surviving and dissolving companies) have engaged in business for at least one year as of the merger date, ii) where consideration is paid, at least 80% of the consideration paid to the shareholder of the dissolving company consists solely of shares in the surviving company and iii) the surviving company continues to carry out the operations of the transferred business until the end of the fiscal year of the merger. In the case of a merger, tax loss carry-forwards of the surviving company can only be used to offset profits generated from the original business of the surviving company. Similarly, the tax loss carry-forwards of the dissolved company can only be used to offset the profits from the business of the dissolved company.

Furthermore, in the case of a merger, if the merger corporation is dissolved by merger, the corporation tax reflecting the transfer profit and loss should be calculated as the corporation's assets are transferred to the merged corporation. In case of non-qualifying merger, if the merger corporation succeeds the assets of the acquired corporation, it is considered to have been transferred to the market price. In this case, the profits of merger (if the transferred amount is less than the net asset value) are equally divided into five years. In the case of qualifying merger, it is assumed that the book value is transferred and there is no transfer profit or loss. In the case of split, the same applies as in the case of the above merger.

MANAGEMENT INCENTIVES

24. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES IN CONNECTION WITH SELLING OR BUYING A COMPANY?

In cases where incentives such as stock options are granted to management, at each stage, careful consideration in respect to accounts and taxes should be given in dealing with matters including granting, vesting, exercising, etc. According to the Article 340-2 of Commercial Act, a company may grant an option for purchasing new shares or its own shares at a fixed price established in advance ("exercising price for stock option") to its directors etc. for a certain period time ("grant date"). If a director etc. exercises a stock option, the difference between the exercising price for stock option at the time of the exercise ("exercise day") and the actual value ("market price") of the relevant stock becomes earned income and subject to the income tax.

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