KOREA

1. INTRODUCTION

a. Forms of Legal Entity

There are several types of legal entities that could be utilised to conduct a business in Korea. A corporation (*"jushik hoesa"*) and a limited company (*"yuhan hoesa"*) are traditionally utilised entities and are common. A corporation consists of shares owned by shareholders and is governed by the board of directors in accordance with rigid corporate governance procedures prescribed by Korean corporate law (the Commercial Code). A limited company consists of units owned by members and is governed by a more flexible set of rules prescribed by Korean corporate law. Both corporation and limited company afford limited liability to the shareholders and members. They are both taxed as "corporation" and are subject to corporate income tax.

On the other end of the spectrum are a trust (*"shintak"*) and a partnership (*"johap"*). They are not considered to be separate entities and are not taxed at the entity level. Generally, beneficiaries and partners are taxed on their share of trust income and partnership income, respectively.

In the middle of the spectrum are a joint investment company ("hapja hoesa") and a joint name company (*"hapmyung hoesa"*). They are loosely analogous to a limited partnership and a general partnership, respectively. They provide limited liability to limited partners, but not to general partners. For tax purposes, they are prima facie treated as corporation, but can elect to be treated as pass-through. If the pass-through treatment is elected, general partners would be treated as if they are conducting their portion of the company's business for tax purposes and be responsible for reporting taxable income (and if applicable, taxable loss) allocated to them. On the other hand, limited partners would be treated similarly to shareholders receiving a distribution in the amount of their portion of the net income of the company and would not usually recognise any loss allocation.

Please note that Korean tax rules for a pass-through entity are not completely analogous to those found in other countries (e.g. the character of income may not be completely passed through), and a different or special set of rules could apply to different types of entities. Taxpayers should be wary of peculiarities of the entity classification rules and tax treatment.

b. Taxes, Tax Rates

i Corporate Income Tax Rates

Corporate taxpayers are subject to income tax under the Corporate Income Tax Act ("CITA") at gradual marginal rates, which range from 11% to 27.5% (please refer to the table below). Please note that, pursuant to the recent tax law amendments, which are intended to promote job creation and wealth redistribution, corporations that have capital exceeding KRW50 billion or are part of one of the designated large business conglomerates under the Monopoly Regulation and Antitrust Act could be subject to additional corporate income tax, to the extent their corporate earnings are not used (appropriated) to finance salary increases for employees or business investment. An additional corporate income tax applies at 22% of the relevant corporation's "unappropriated earnings." Unappropriated earnings, in turn, are calculated to be the lower of (i) 65% of the corporation's corporate earnings (net taxable income) after subtracting the amount of employee salary increase and business investments, or (ii) 15% of the corporate earnings after subtracting the amount of employee salary increase. However, corporate earnings exceeding KRW300 billion (i.e. falling under the top corporate income tax bracket) are not subject to the unappropriated earnings tax; accordingly, the net result of such tax would be subjecting the corporation to higher marginal tax rates (up to the maximum of 27.5%) even if its taxable income is lower than those specified in the table. The unappropriated earnings tax is applicable until the end of 2022, which may be extended by further amendments.

Tax Bracket	Tax Rates (including local income surtax; but not including the additional tax on unappropriated earnings)
Up to KRW200 million	11%
KRW200 million – KRW20 billion	22%
KRW20 billion – KRW300 billion	24.2%
More than KRW300 billion	27.5%

(KRW: Korean Won)

ii Personal Income Tax Rates

Individual taxpayers are subject to income tax under the Personal Income Tax Act ("PITA"), and the applicable rates vary depending on the types of income. Most types of income are subject to tax at gradual marginal rates, ranging from 6.6% to 49.5% (please refer to the table below).

Tax Bracket	Tax Rates (including local income surtax)
Up to KRW12 million	6.6%
KRW12 million – KRW46 million	16.5%
KRW46 million – KRW88 million	26.4%
KRW88 million – KRW150 million	38.5%
KRW150 million – KRW300 million	41.8%
KRW300 million – KRW500 million	44%
KRW500 million – KRW1 billion	46.2%
More than KRW1 billion	49.5%

(KRW: Korean Won)

c. Common divergences between income shown in tax returns and local financial statements

There are two sets of accounting rules applicable to Korean taxpayers. The traditional Korean GAAP ("K-GAAP") rules have been in place for a long period and continue to be applicable to those that are not required to use (or are electing to use) the IFRS (International Financial Reporting Standards), which was adopted in Korea in 2009. Publicly traded companies and financial services companies are required to use the IFRS for their accounting; those that are not required to use the IFRS may elect to use them or continue to use the K-GAAP.

In general, the tax treatment of an event or item follows its accounting treatment. However, due to the different purpose of tax reporting (distribution of tax burden and achievement of certain level of tax revenues, pursuant to political policy) and accounting reporting (accurate assessment of the financial condition to facilitate decision-making by various interested parties), different treatments may occur. Such divergence could be permanent: for example, entertainment expenses above certain threshold or charitable donation not falling under the prescribed scope are denied deduction for tax purposes for policy reasons, while allowed for accounting purposes. Others could be a timing difference and temporary: for example, valuation gain or loss (generally not recognised for tax purposes) and bad debt loss.

2. RECENT DEVELOPMENTS

In response to the COVID-19 pandemic and its impact on the Korean economy, the Korean government implemented a substantial budget to rescue strategic industries in financial distress and promote spending by the general public. On the other hand, measures undertaken in relation to tax rules were rather limited and mostly confined to select disaster hit areas; these measures included a tax reduction and tax filing and payment extension for businesses located in the areas that are heavily affected by COVID-19 (designated as the 'Special Disaster Areas') and a temporary increase in the deductible amount limit for entertainment expenses; many of these measures are scheduled to expire after 2022.

The corporate tax rates had at one point been substantially reduced to 22% (maximum marginal rate) from the historical rates well above 30%. However, during the past few years, out of concern to maintain fiscal balance and in line with the political propensity of the current government regime, tax rates have gradually been increasing and the current maximum rate is 27.5%.

Korea had long maintained a special regime for foreign direct investment, whereby exemptions/reductions for corporate income tax and customs and transaction taxes were granted during the prescribed period to foreign invested Korean entities in new technology areas or in specific geographical areas. This regime is now being phased out. With respect to corporate income tax benefits, new applications have not been accepted since 2019.

In the international tax area, a substantial number of judicial precedents were produced during the past several years holding that the Korean anti-abuse rule applies in the treaty context and thereby denying treaty benefits (for example the capital gains tax exemption for private equity funds' transfer of Korean shares or the reduced tax rates for dividends from Korean subsidiaries) unless a stringent beneficial (substantive) ownership standards are met. Due to the rigorous application and the operation of archaic domestic rules, many of these precedents resulted in the denial of treaty benefits not only in reference to the intermediate paper companies, but also in reference to the ultimate investors with substance in their respective countries of residence. Instead, the fund vehicles (frequently in the Cayman Islands, the BVI, or Bermuda, with which Korea does not have a double tax treaty) were determined to be corporate entities under the Korean entity classification rules and also to be the substantive owner, in reference to whom the treaty benefits (or the lack thereof) should be determined.

Subsequently, several legislative amendments have been proposed and effected to clarify the foreign entity classification rules and their tax treatment in Korea. In particular, the Presidential Decree of the CITA was amended in 2019 to remove Article 2(1)(3) that would treat "an entity that owns an asset, becomes a party to a lawsuit, or directly holds a right or owes an obligation, independent of its members" as a foreign "corporation" (as opposed to a pass-through entity) for Korean tax purposes. Foreign limited partnerships, which were previously treated as foreign corporations for Korean tax purposes because they could be a party to a lawsuit and/ or directly hold rights or obligations separate from their partners, would no longer be treated as foreign corporations for Korean tax purposes as a result of the removal of Article 2(1)(3). The amendment applies for taxable years commencing on or after 1 January 2020. These amendments are intended to alleviate unexpected tax consequences for private equity funds and other foreign investors and to bring the rules surrounding treaty application in line with the global trend. Nonetheless, the foreign entity classification rules contain other criteria that may treat a foreign hybrid entity as corporation; therefore, care should be taken to consider the detailed qualifications and conditions associated with such rules.

Korea is one of the member countries of the OECD and is considered to be an early adopter for most of the OECD developments, particularly concerning BEPS. It has already implemented or is in the process of implementing most of the OECD BEPS action plans (e.g. domestic legislation to incorporate the transfer pricing reporting requirements, exchange of nformation, the interest deduction limitation and the expanded permanent establishment definition, as well as having ratified the MLI (Multilateral Convention to Implement Tax Treaty Related Measures)). It has fully signed on to the MCAA (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information) and, with respect to the United States, is a party to the FATCA IGA (Model 1; Foreign Account Tax Compliance Act, Intergovernmental Agreement). Korea also has its own Foreign Financial Account Reporting regime ("FFAR") that requires Korean taxpayers to report their assets outside of Korea, which is analogous to the FBAR regime in the United States.

Korea implemented a simplified value added tax ("VAT") reporting regime in 2015 for foreign providers of digital services ("electronic services") even if they do not have a fixed place of business or PE in Korea in a traditional sense and is increasing the scope step by step. In particular, the scope of electronic services that are subject to VAT in Korea was expanded recently. Effective 1 July 2019, electronic services that are subject to VAT will include a broad spectrum of items: games, audio/video files, software, online advertisement services, cloud computing services and online intermediary (platform) services for a supply of goods/services in Korea.

In addition, the Korean tax authority has increased scrutiny over global IT companies' activities in Korea and recently conducted several intensive tax audits for any PE or improper transfer pricing arrangements. Whilst a direct form of digital tax has not yet been introduced in Korea, the government is closely monitoring countries that are attempting to introduce digital tax and undertaking a comprehensive review on the potential implications of digital tax. In this regard, the Korean government has announced that it will keep pace with the OECD's plans to implement Pillars One and Two, addressing tax challenges of the digital economy, by 2023.

3. SHARE ACQUISITION

a. General Comments

As a general matter, a transfer of shares in a Korean company would trigger a taxable event for the shareholders but would not affect the operations of the company. Legal steps to be taken to affect the share transfer and reporting procedures required with respect to the transaction are relatively simple.

The shareholder that transfers shares in the target company will be subject to income tax (corporate income tax in the case of a corporate shareholder and personal income tax in the case of an individual shareholder) with respect to the gain from such transfer. In the case of a foreign shareholder (without a permanent establishment in Korea), withholding tax at the rate of 11% of the gross sales proceeds or 22% of the net gain (whichever is lower) will be imposed, which may be exempt under an applicable tax treaty between Korea and the shareholder's residence jurisdiction (provided that the shareholder is the beneficial owner of the gain from the transfer, as required by Korean tax authorities). In addition to the treaty exemption, there are a few exemptions for capital gains that are available for publicly traded shares if certain conditions are met.

The acquiror of shares will generally take the tax basis in the shares in the amount of the transfer consideration.

In addition to the income tax, various transaction taxes could apply as discussed below.

b. Tax Attributes

In the case of a share transfer in a company, only shares are considered to change hands. Therefore, there is no material effect on net operating loss ("NOL") carryovers and other tax attributes in the target company, despite any change of control.

c. Tax Grouping

Under the consolidated tax return rules, an eligible corporate group that elects to file a consolidated tax return, is able to consolidate the income and losses of each entity in the group and defer tax on gains arising from the transfer of certain assets within the group until final disposition is made outside the group and until certain triggering events occur. In principle, the parent company and its subsidiaries over which the parent company has "complete control" are includible in the group. "Complete control" in this context means the direct or indirect ownership of all (100%) the shares in the subsidiaries, with certain exceptions for shares owned by qualified employee stock ownership associations. Moreover, only domestic Korean corporations are eligible to be included in the group.

In order for the group to start filing a consolidated tax return, the parent company must submit an application within 10 days after the beginning of the first taxable year of election, with the regional National Tax Service ("NTS") office which has jurisdiction over it. The regional NTS office will then notify the parent company of approval or denial of the application within two months after the beginning of such taxable year. Once the election is made, all of the subsidiaries over which the parent company has complete control must be included in the group. If the consolidated group acquires the complete control of another Korean corporation, the new subsidiary will automatically become part of the consolidated group.

A corporate group filing a consolidated tax return is subject to various restrictions in consolidating their tax attributes. For example, capital losses incurred by a consolidated subsidiary within five years from the election are deductible only from the taxable income of such subsidiary. Also, a NOL generated in a tax year prior to its commencement of consolidated tax return filing cannot be used to offset income of any member of the group other than the corporation that generated such NOL, while a NOL generated after the commencement is not subject to such a limit. In addition, the use of NOL carryovers are subject to the general limit of 60% of the taxable income against which it is intended to be used; this limitation is applicable to all corporations, not only consolidated income tax groups.

If the consolidated group wishes to discontinue the consolidation, it must submit an application to the NTS which has jurisdiction over it within three months prior to the tax year from which it intends to discontinue. Please note that the consolidated group, once it elects to file consolidated tax returns, is required to continue such status for at least five years before it can apply for termination of such status.

d. Tax Free Reorganisations

It is possible to structure a share transfer to obtain tax free treatment under tax law. If a share transfer qualifies for such treatment, the target shareholders will not recognise any capital gains at the time of the transfer and will carryover the tax basis in the target shares as the tax basis in the shares in the acquiring company received in exchange for the transfer. The company acquiring the target shares, on the other hand, will obtain the step up in the tax basis; the acquiring company used to inherit the tax basis in the hands of the target shareholders, but such rule has recently been amended to eliminate the potential double taxation (tax on the same gain both in the hands of the target shareholders (to be triggered when they transfer the shares in the acquiring company received in the transaction) and the acquiring company with respect the target shares received).

In order to obtain the tax free treatment (in order to become a qualified comprehensive share exchange/transfer), the following requirements must be met at the time of the transaction and also certain post-transaction requirements must be complied with during a certain period after the transaction.

i Corporate Procedure

As a first step, the transaction itself should be structured in the form of "comprehensive share exchange" or "comprehensive share transfer" within a meaning of Korean corporate law (the Commercial Code). They are Korean corporate law concepts and were introduced in the Commercial Code in 2001 to facilitate a holding company structure. A comprehensive share exchange is a corporate law procedure which requires a special resolution of the shareholders of each of the target company and the acquiring company. A comprehensive share transfer on the other hand requires a special resolution of the shareholders of the company transferring the shares. For both a comprehensive share exchange and a comprehensive share transfer, dissenting shareholders are provided with an appraisal right, whereby the dissenting shareholders can request the company to redeem their shares. Once the shareholders approve the transaction and take the resolution, all shareholders, except for those exercising the appraisal right, get to participate in the comprehensive share exchange or comprehensive share transfer by operation of law.

A comprehensive share exchange is a procedure available for an already established and existing company (the acquiror) that intends to acquire 100% shares in the target company, in exchange for newly issued shares in the acquiror. As a result of such exchange, the target becomes a wholly owned subsidiary of the acquiror. A comprehensive share transfer is a procedure available for a target company that wishes to create a newly formed holding company (the acquiror). In a comprehensive share transfer, shareholders of the target company transfer all of the shares in the target to the acquiror in exchange for the shares in the newly established holding company (the acquiror).

ii Transaction Requirements

In cases of both a comprehensive share exchange and a comprehensive share transfer, the relevant transaction needs to satisfy additional requirements prescribed by tax law:

- The acquiror and the target involved in the exchange/transfer must be Korean corporations that have been in business for one year or longer as of the date of the exchange/transfer (one year requirement).
- At least 80% of the consideration paid to the target shareholders must consist of shares in the acquiror; the so called continuity of interest ("COI") requirement.
- The amount of shares distributed to each of the target's controlling shareholders (in essence, shareholders, each of whom owns at least 1% of the target shares and collectively with related parties owns the largest percentage of the target shares) for the exchange/transfer consideration should equal or exceed the product of (i) the total value of the acquiror's shares paid as consideration and (ii) the shareholding ratio of each controlling shareholder of the target (the so called distribution requirement).
- Each controlling shareholder of the target must hold at least 50% of the shares distributed pursuant to the distribution requirement through the end of the taxable year in which the exchange/transfer takes place. In addition, the acquiror must hold at least 50% of the shares in the target until the end of the taxable year in which the exchange/transfer takes place (the so called continuing shareholding requirement).
- The target must continue to conduct its business at least until the end of the taxable year in which the exchange/transfer took place, known as the continuity of business enterprise ("COBE") requirement. If 50% or more of the value of the fixed assets owned by the target on the exchange/transfer date is disposed of or not used, the business is deemed to have been terminated and the COBE requirement will not be satisfied.

iii Post-Transaction Requirements

Unless the following post-transaction requirements are complied with for two years from the end of the taxable year in which the comprehensive share exchange/transfer takes place, tax benefits will be recaptured for the shareholders of the target company. As a result, the shareholders that received shares in the acquiring company in exchange for the target shares will be subject to tax with respect to the transfer of the target shares. In addition, any transaction taxes, which had been previously exempted, could also be recaptured and imposed on the acquiror.

- The target should continue its business during the period. The target's business is deemed discontinued if the target disposes of 50% or more of the total value of its fixed assets or does not utilise such assets in its business. However, this rule does not apply if such assets are sold or discontinued due to any subsequent qualified reorganisations or the bankruptcy of the target.
- The controlling shareholders of the target should not dispose of 50% or more of the acquiror stock received as the transaction consideration to transferees that are not controlling shareholders. However, if the disposition takes place due to death or bankruptcy of the shareholder, subsequent qualified reorganisation, or in order to fulfil a legally imposed obligation, the tax benefits will not be recaptured.
- The acquiror should not dispose of 50% or more of the target stock received from the transaction. However, if the disposition takes place due to bankruptcy of the acquiror, subsequent qualified reorganisation, or in order to fulfil a legally imposed obligation, the tax benefits will not be recaptured.

e. Purchase Agreement

i Withholding Agent's Liability

In addition to comprehensive legal and tax indemnity provisions that should be included in the purchase agreement, in order to cover all known or unknown historical liabilities of the target company, special attention should be paid to the provisions for withholding tax. The acquiror of shares in a Korean company could be the withholding agent (especially where the seller of the shares is a foreign party) for income tax and securities transaction tax ("STT"). Under Korean tax law, the withholding agent has the ultimate responsibility for withholding the correct amount of tax and paying it over to the tax authority and is liable vis-à-vis the tax authority for any deficient withholding.

In the case of a foreign seller, the determination of the treaty entitlement to calculate the correct amount of withholding tax and allocation of the risk of subsequent challenge (if any) by the tax authority become a subject of intense negotiation. A contractual tax indemnity provision for the withholding agent is customarily included in the purchase agreement. In some cases, the hold back of a portion of the purchase price or escrow account is implemented until the risk of tax assessment is alleviated.

ii Statute of Limitations for Tax Assessments

Under Korean tax law, the statute of limitations for most tax assessments is five years from the due date of the relevant tax return and seven years for taxes involving cross border transactions. If no tax return was filed with respect to the transaction, the statute is extended to seven years (10 years for taxes involving cross border transactions), and 10 years in the case of tax evasion (15 years for taxes involving cross border transactions). The survival clause of various representations in the share transfer agreement should take into consideration these periods during which potential tax liabilities may arise.

iii Controlling Shareholder's Secondary Tax Liability

Please also note that, under Korean tax law, the controlling shareholder of a company bears a secondary tax liability with respect to national taxes (e.g. income tax and VAT) of the company if the company does not have sufficient assets to pay off its tax obligations. This secondary liability applies to the controlling shareholder of the company as of the time the relevant tax liability becomes final and fixed, which, in the case of corporate income tax, is the last day of the relevant tax year. In certain limited situations, the acquiror of the shares in the target company may come to have such a secondary tax liability for a period (or portion thereof) during which the seller was the controlling shareholder. Careful review of the target company's tax situation is required to ensure that the acquiror does not unintendedly assume such a liability.

f. Transfer Taxes on Share Transfers

i Securities Transaction Tax ("STT")

In the case of a share transfer, the transferor is generally subject to the STT at the rate of 0.23% (0.15% for transfers executed on or after 1 January 2023) for a transfer of shares via stock exchange, or 0.43% (0.35% for transfers executed before 1 January 2023) for other transfers, on the amount of consideration (whether cash or other property such as shares in another company). STT is generally imposed on the transferor, though the transferee or certain intermediaries (such as a broker or depository involved in a transfer of publicly traded shares) may have the obligation to withhold and pay the tax to the tax authority. The transferor (unless withholding applies) must make the STT payment and filing with the tax authority within 2 months after the end of the half year in which the transaction occurs.

Generally, STT is not imposed if a transaction satisfies the requirements for a tax free reorganisation (i.e. a qualified reorganisation).

ii Deemed Acquisition Tax ("DAT")

In the case of shares in a non-listed company or, among listed companies, KOSDAQ/KONEX-listed company, the DAT is imposed on the purchaser that, combined with its related parties, becomes the controlling shareholder in such company (i.e. it comes to own more than 50% of the stock in such company). Shares in a company that is listed on the Korea Exchange are not subject to the DAT.

The rate is usually 2.2% of the underlying book value of the registrable assets (such as real property, vehicle and golf club membership) owned by the company (which would be subject to the acquisition tax if transferred directly), multiplied by the shareholding ratio of the purchaser.

The purchaser must report and pay the DAT within 60 days from the date of acquisition of the shares which cause the purchaser to become the controlling shareholder. The purchaser must also report and pay the DAT on a subsequent acquisition of additional shares in the same company to the extent the purchaser remains the controlling shareholder of that company.

If the transaction satisfies the requirements for the tax free reorganisation, a certain proportion of the DAT could be exempt.

iii Registration License Tax

In general, the registration license tax is imposed on the capitalisation or the increase of capital (i.e. upon incorporation of a company or new share issuance). The tax rate is 0.48% (standard tax rate of 0.4% plus surtax) and is imposed on the aggregate par value of the newly issued shares. The rate could triple to 1.44% if the issuing company is located in a certain congested metropolitan area (the capital city of Korea, Seoul, is one of the designated areas). Generally, transactions are not exempt from this tax even if they satisfy the requirements for a tax free reorganisation.

Companies are required to report and pay the registration license tax before filing a registration for the capitalisation or the increase of capital.

g. "Purchase accounting" applicable to share acquisitions

Under both IFRS and K-GAAP, purchase accounting (i.e. acquisition method of accounting) would generally be used for acquisitions (direct or indirect), unless the acquiring company and target company were and, after the acquisition, remain in the same control group. Pursuant to purchase accounting, the acquiring company would record the assets of the target company at fair market value. To the extent the acquisition price exceeds the fair market value of the assets, such excess would be recorded as goodwill; to the extent the price falls under the fair market value, the shortfall would be recorded as gain from bargain purchase.

If the target remains under the same controlling party before and after the acquisition (the case of common control), purchase accounting would not apply. K-GAAP provides that the book accounting method should be used in such a case. IFRS on the other hand is silent on the point, in which case the parties are to select and use a reasonable method of accounting.

h. Share Purchase Advantages/Disadvantages

i No Step-Up of Tax Basis in Assets

A share purchase, as opposed to an asset purchase, has the advantage of simplicity in the steps involved in effecting the transaction. The parties would have to transfer the shares, and all assets owned by the target would come along with the target. However, as discussed, there is a corresponding disadvantage in that the target comes not only with the assets, but all its historical liabilities as well, including potential and unknown liabilities. Included in such package would be imbedded gain in assets of the target, which could materialise in a tax liability in the future.

Korean tax law does not provide any option to step up the tax basis in the target assets in a share transaction.

ii Tax Clearance Certificates

Entities could obtain tax clearance certificates issued by the responsible tax authority, certifying that tax returns and tax payments that came due have been filed and paid. Tax clearance certificates could be useful in verifying whether the taxpayer (e.g. the target company to be acquired) has been generally compliant with their tax obligations, by filing tax returns and paying taxes specified in the tax returns; however, they do not verify whether tax returns filed were accurate and therefore, cannot be used to finalise the acquiring entity's tax exposures for periods prior to acquisition.

iii Controlling Shareholder's Secondary Tax Liability

As discussed above, under Korean tax law, the controlling shareholder of a company takes a secondary tax liability with respect to national taxes (e.g. income tax and VAT) of the company arising after such shareholder becomes the controlling shareholder, if the company does not have sufficient assets to pay off its tax obligations. Accordingly, the acquiror that comes to own the controlling shares in the target company should be conscious of such risk.

4. ASSET ACQUISITION

a. General Comments

In an asset transfer, the target company would usually transfer its assets to the acquiror and recognise gain from such transfer. The acquiror would take the tax bases in the assets, which are stepped up to the consideration paid for such assets. In comparison with a share transfer, the asset transfer would entail more steps to effect the transfer of various types of assets; on the other hand, it would have the commercial (and also tax) advantages for the acquiror in that it does not get to inherit any historical liabilities imbedded in the target entity.

If all business related contracts and assets and liabilities in the target are comprehensively transferred in an asset transfer, such a transfer could constitute a "business transfer" that could afford the transaction parties a different tax treatment (discussed further below).

b. Purchase Price Allocation

The purchase price is generally allocated based on the market value of each asset. Once the total purchase price is allocated to all identifiable assets including intangible assets, any remaining portion of the purchase price is allocated to goodwill.

c. Tax Attributes

In an asset transfer, historical tax attributes (NOL, tax credits, etc.) of the target company would not be transferrable and thus would not be preserved in the hands of the acquiror. On the other hand, carried forward NOLs may remain in the target company and can continue to be used by the target company.

d. Tax Free Reorganisations

It was possible until 2017 to structure an asset transfer as qualified "comprehensive asset transfer" (with a set of requirements analogous to qualified comprehensive share exchange/transfer) and obtain tax free treatment for the target company and its shareholders. However, such category of tax-free reorganisation was repealed from 2018 and is no longer available.

Depending on the resulting corporate structure desired, the parties could consider other types of tax free reorganisations, such as qualified "in-kind" contribution (i.e. non-cash property contribution) to achieve their objectives.

e. Purchase Agreement

An asset transfer would usually not entail the acquiror inheriting tax liabilities of the seller. However, if the transaction is characterised as a "comprehensive business transfer" under Korean tax law, certain acquirors (such as parties related to the seller or those acquiring the business with intent to enable the seller's avoidance of tax liabilities) bear the secondary liability for the seller's tax liabilities with respect to the historical operations of the transferred business, up to the purchase price of the assets. However, the acquiror does not bear the secondary liability for capital gains tax arising in respect of the transaction itself. Although this liability would appear to apply in limited circumstances, it would be prudent to draft the tax indemnity provision in the purchase agreement broadly enough to cover such a risk. In addition, certain taxes (such as property tax) associated with a specific asset could come with the transferred assets; therefore, care should be taken to identify such a risk.

If the seller of the assets is a foreign party, the acquiror would be the withholding agent that is responsible for making and paying the correct withholding for income tax and transaction taxes (such as Securities Transaction Tax "STT"). Proper tax indemnity and other security mechanisms should be considered, similar to a share transaction.

f. Depreciation and Amortisation

The acquiror of the target assets would generally be able to depreciate and amortise the acquired assets in accordance with the customary rules and will reduce the tax basis allocated to each asset in accordance with the purchase price allocation. The depreciation is usually not allowed for land but allowed for buildings and fixed assets generally over 15-50 years (40 years being most common). As for equipment and other business assets, depreciation is allowed over varying periods depending on the type of business (generally, 3-25 years).

Goodwill and most types of registered intellectual properties are amortisable over five years, and patents over seven years. With respect to goodwill, additional conditions are imposed for amortisation: it has to represent specific economic benefit or excess earning power (e.g. license, permit, favourable geographic location, trade secret, reputation, customer list, or business relationship) and its value is confirmed by a reasonable and proper method prescribed by tax law.

g. Transfer Taxes, VAT

Under the Value Added Tax Act ("VATA"), value added tax ("VAT") at the rate of 10% is applicable with respect to supply of goods or services. Usually, the supplier (the seller) has the obligation to collect VAT (customarily added to or incorporated in the purchase price) and pay it over to the tax authority. The purchaser, in turn, generally gets the input VAT credit, which it can use to offset any VAT it has to collect or obtain a refund. Accordingly, in the context of an asset transfer, the seller of the assets would usually bear the obligation to collect the proper VAT as part of (or in addition to) the purchase price and pay to the tax authority. The acquiror in turn would usually be able to obtain an input VAT credit or refund with respect to such VAT paid.

If the asset transfer is characterised as a "comprehensive business transfer," however, the transaction would be exempt from VAT. In practice, there is a fine line between a comprehensive business transfer and a regular asset transfer, and such a determination frequently becomes a subject of challenge by the tax authority and a tax dispute. Under the recent tax law amendments, this issue can be largely addressed by utilising the proxy VAT return regime; if the purchaser (in lieu of the seller) files a proxy VAT return based on the position that the transaction is not a "comprehensive business transfer," no penalty would apply even if the tax authority later disagrees with such position.

In addition to income tax with respect to gains from transfer of assets, the seller of the assets would be subject to STT at 0.43% or 0.23% (if transferred through a stock exchange) to the extent the assets consist of shares in another company. From the year 2023, these STT rates are scheduled to go down to 0.35% and 0.15%, respectively.

To the extent that assets transferred are registrable assets (e.g. real property, vehicles, golf club membership, etc.), the acquiror will be subject to acquisition tax and registration tax. The rates vary for different categories of assets; for real property, generally 4.6% acquisition and registration taxes apply, and such rates could be subject to multiplied tax rates if located in certain congested areas. In the case of a tax-free organisation, a portion (generally, 70% - 80%, but not all) of these taxes may be exempt.

h. Asset Purchase Advantages/Disadvantages

An asset transfer, as opposed to a stock transfer, has an advantage of not inheriting historical liabilities of the seller (with exceptions, such as property tax and the secondary tax liability for a comprehensive business transfer). The tax basis in the assets would also usually be stepped up, so that the acquiror need not suffer from recognising imbedded tax liabilities in the future (unless in the case of an asset transfer done in an alternative form of a tax free reorganisation, such as a qualified "in-kind" contribution (i.e. a non-cash property contribution)).

5. ACQUISITION VEHICLES

a. General Comments

Foreign investors acquiring assets in Korea usually do so through a domestic acquisition vehicle (which may in turn be owned by a foreign acquisition vehicle). On the other hand, the acquisition of Korean shares is usually done without a domestic acquisition vehicle.

b. Domestic Acquisition Vehicle

A number of entity types are available as domestic acquisition vehicle. Two most customary choices are a corporation (jushik hoesa) and a limited company (yuhan hoesa). Both provide limited liability to shareholders and are treated as corporations for Korean tax purposes. Other types of entities that could elect to be treated as pass-through entity for tax purposes could also be considered. The pass-through taxation provides the advantage of avoiding double taxation (i.e. entity level and shareholder level taxation), but may in some cases expose foreign partners to the burden of Korean tax reporting obligations and Korean tax liability with respect to the entity level operation. For foreign investors, a corporate type entity is a more customary choice for acquisition.

c. Foreign Acquisition Vehicle

A foreign investor (e.g. a global operating company or a private equity fund) could invest in Korea either directly (in the case of an asset acquisition, usually through a domestic acquisition vehicle) or may choose to interpose a foreign acquisition vehicle. When considering a choice of foreign acquisition vehicle, the availability of treaty benefits should be taken into consideration. Korea has an extensive double tax treaty network, and many Korean tax treaties provide an exemption for capital gains and reduced withholding tax rates for dividends, interest, royalties and other types of income. Under the recently established judicial precedents, an intermediate acquisition vehicle is subject to a stringent substance requirement and is often denied treaty benefits if it is found to have been established without a valid business purpose and for a tax avoidance purpose (i.e. treaty abuse), thereby subjecting the structure to much uncertainties. As this is still an evolving area of jurisprudence, a careful analysis of the latest developments is needed to minimise risks associated with structuring.

d. Partnerships and Joint Ventures

A foreign investor entering into a joint business operation with a Korean partner would usually set up a separate joint venture entity in Korea (usually a corporate form of entity), for the same reason as acquiring assets through a domestic acquisition vehicle. Using a corporate type joint venture entity could block liabilities and tax reporting obligations associated with the business operation.

e. Strategic vs Private Equity Buyers

A foreign strategic investor (e.g. a global manufacturing company), may already have an existing holding company in the corporate group, through which other foreign investments are held and managed. The use of an existing holding company with other subsidiaries or assets/operations, and substantial operating history and personnel, to acquire the Korean investment tends to be conducive to satisfying the "substance" requirement posed by the case law for claiming a treaty benefit. A strategic investor should consider utilising existing entities in its group.

A private equity investor would also need to establish the substance of an intermediate holding company, if it plans to rely on the treaty benefits in reference to the residence jurisdiction of such holding company. If it is difficult to find a holding company that meets the stringent substance requirement posed by Korean tax law, the private equity investor should alternatively consider claiming treaty benefits in reference to its ultimate investor's residence jurisdiction. In order to do so, it would be important to ensure that the fund vehicles and intermediate entities are treated as pass-through or disregarded for Korean tax purposes, so that the tax authorities do not try to stop at an intermediate entity level and determine the applicability of a treaty benefit in reference to such entity.

6. ACQUISITION FINANCING

a. General Comments

The acquisition funds could be brought into Korea in the form of equity or debt. Bringing in foreign funds is subject to Korean foreign exchange ("FX") regulations and requires reporting or approval from the designated FX authority. An equity investment corresponding to a minimum of 10% equity stake in a company or accompanied by a management right (foreign direct investment) could be made subject to a fairly simple reporting procedure, which usually clears within a matter of a few days.

Funding in the form of debt, on the other hand, tends to be subject to a stricter reporting procedure and, depending on the government's FX policy at a given time, could be prolonged substantially or denied clearance.

b. Equity

Capital gains from the transfer of Korean shares are subject to withholding tax at the lower of 11% of the sales proceeds or 22% of the net gain. Dividends are subject to withholding tax at 22%. For listed shares, there is a domestic tax law exemption for shares transferred through the exchange if the foreign investor (and related parties) did not own directly or indirectly 25% or more of the shares in the relevant Korean company at any time during the prescribed period for the past five years.

In addition, most Korean tax treaties provide an exemption from the foregoing tax on capital gains from Korean shares and reduced withholding tax rates for dividends. The tax treaty with Mexico provides an exemption from withholding tax on dividends. Accordingly, such jurisdictions could be considered favourable from a tax perspective.

However, in order to claim a treaty, benefit in Korea, stringent substance requirements need to be met. Accordingly, selecting a jurisdiction where the foreign investor can establish the substance often becomes a more difficult and important consideration in practice, rather than finding a most favourable tax treaty.

c. Debt

i Limitations on Use of Debt and Interest Deductions

Funding through debt financing provides the advantage of an interest deduction. Under Korean tax law, several longstanding anti-abuse rules limiting interest deductions are applicable. Most notably, the earnings stripping rules (i.e. the thin capitalisation rule and the deemed capitalisation rule) would deny interest deduction with respect to borrowings from a foreign controlling shareholder (or its related party) or third party borrowings secured by a foreign controlling shareholder, to the extent they exceed certain multiple of the equity investment by such shareholder.

Recently, additional limitation rules were adopted in line with the trend of BEPS. Please refer to Section 12. OECD BEPS Considerations, below for details on the additional limitation on the deductibility of interest payments made to foreign related parties.

Interest payments to a foreign lender would be subject to withholding tax at 22%, which may be reduced by an applicable tax treaty. There also is a tax exemption afforded to interest on foreign currency denominated bond issued outside of Korea under Korean domestic tax law.

ii Debt Pushdown

A debt pushdown is often accomplished in Korea by having the acquisition vehicle establish a nominal merger subsidiary, arranging such subsidiary to take a debt financing and having it merge into the target company, whereby the target company assumes the debt. If the financing for the merger subsidiary is done using the target company's assets, it could trigger the issue of the breach of fiduciary duty for the board of directors of the target company under Korean corporate law. Such a financing should be carefully structured to provide a justifiable commercial basis for the target to enter into the relevant transactions.

d. Hybrid Instruments

Hybrid instruments containing features of partly equity and partly debt may be used for financing (e.g. redeemable preferred stock or participating loans). Under Korean law, no black and white rule is prescribed, but they would be governed by the general principle that their tax treatment should be determined based on the substance, not only the form, of each instrument.

Another type of hybrid instruments could be those that are treated as debt in Korea but equity in the lender's jurisdiction or vice versa. Recently, in accordance with the OECD recommendation (BEPS Action 2), Korea introduced a new rule which limits the deduction of expenses relating to cross border hybrid financial instrument transactions between a Korean corporation (including the Korean branch of a foreign corporation) and its foreign related party. Where a payment made in relation to a hybrid financial instrument is wholly or partly not taxable in the counterparty jurisdiction, the new rule applies to deny the deduction for the non-taxable portion.

e. Earn-Outs

The purchase price for the relevant assets or shares would usually consist of the fixed portion (whether cash, stock or other property), but sometimes could also include contingent payments based on certain conditions (e.g. earn-out payments based on the performance of the acquired target or business).

Though the CITA does not specifically address these issues, as a general practice, the fixed part of the purchase price is reported at the time of the sale, and subsequently amended returns are filed to reflect variable part of the purchase price once determined. Interest or penalties associated with such amended returns are generally waived if it is found to have been difficult to know, at the time of the original tax return, whether conditions for the earn-out payments would be satisfied.

The acquiror would usually be able to obtain an increased tax basis corresponding to such payments.

7. DIVESTITURES

If the acquiror wishes to divest any assets or business lines of the acquired target (or assets), it could consider various forms of spin offs. A horizontal spin off and a vertical spin off are corporate procedures prescribed by Korean corporate law (similar to a merger and comprehensive stock transfer/exchange) and occur by operation of law once the requisite corporate approvals are obtained. In a horizontal spinoff, the target will transfer (spin-off) the relevant assets to a newly formed company (spun-off company), in return for shares in such new entity, and such shares are distributed to the target shareholders. In a vertical spin off, the target will transfer the assets to a newly formed subsidiary, in exchange for shares in such subsidiary (as a result of which the target becomes the parent company).

A vertical spin off resembles the economics of an "in-kind" contribution, which could also be effected in either taxable or tax free manner. Additional forms of divestitures are available under Korean corporate law and tax law, such as a horizontal spin off followed by merger or a vertical spin off followed by merger. The features of a horizontal spin off are discussed below.

a. Tax Free Horizontal Spinoff

A horizontal spinoff could be consummated in a tax free manner, pursuant to a similar set of transaction and post-transaction requirements as those prescribed for a tax free comprehensive share transfer/exchange, but with certain additional requirements. The principal additional requirements are as follows:

- The divided company (target and transferor) is a Korean corporation that has been in business for at least five years ("the five year requirement").
- 100% of the consideration received by the divided company's shareholders in exchange of the spinoff (spin off consideration) is in the form of shares in the spun-off company ("the COI requirement").
- The spun-off business unit is capable of carrying on its business wholly on its own, and the assets and liabilities of such unit were comprehensively transferred in the spin off ("the independent business unit requirement").
- At least 80% of the employees of the divided company that were engaged in the spun-off business as of one month prior to the registration of the spin off, are transferred to the spun-off company and remain employed in the spun-off company until the end of the tax year in which the registration date of the spin off falls ("the continued employment requirement"). (This requirement also applies to the post-transaction requirements, in a slightly less stringent form.)

The independent business unit requirement is a complex requirement and comes with substantial details, many of which are not clear cut. As a result, the qualification for a tax free spin off generally could create uncertainties and requires careful planning.

If a horizontal spin off qualifies as tax free, the transaction taxes applicable with respect to the transfer of certain assets would be partially (but not wholly) exempt, pursuant to the respective rules governing each tax.

b. Taxable Horizontal Spinoff

In a horizontal spin off the divided company (the seller and the target) is deemed to transfer the spun-off assets to a newly established spin off company at the fair market value, in exchange for shares in the spin off company and distribute them to its shareholders. Accordingly, the divided company will recognise taxable gain (or loss) from the transfer of the assets in the amount of their fair market value minus the tax basis in the assets. Its shareholders are deemed to receive a distribution in the form of the spun-off company shares and recognise taxable dividend income to the extent the distribution exceeds their tax basis in the shares in the divided company.

The spun-off company takes a tax basis in the acquired assets equal to their fair market value. If the fair market value of the assets exceeds the purchase price (the share value given as spinoff consideration), such excess would be treated as valuation gain and will be recognised as taxable income over certain period.

In addition to income tax, VAT and other transaction taxes (STT, acquisition tax and DAT) would be applicable depending on the category of assets.

c. Cross Border

The spinoff in the form of a corporate law procedure would be possible only for divided and spun-off companies that are Korean corporations. In the case where a divided company shareholder receiving the distribution of the spin off consideration is a foreign party, dividend withholding tax would be applicable (22% under Korean domestic tax law, which may be reduced under an applicable tax treaty), unless the spinoff qualifies as tax free.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Korean tax is based on a worldwide approach, rather than territorial. Under Korean law, a Korean company (defined as a company having a head office, a main office or a substantive place of management in Korea) is subject to Korean income tax on its worldwide income and is given a foreign tax credit with respect to foreign income tax paid subject to prescribed rules and limitations.

b. CFC Regime

Korean tax law has a controlled foreign company (CFC) regime. Under such regime, a foreign corporation ("F") would be deemed "related to" a Korean company ("K") if 50% or more of F's voting shares are directly or indirectly owned by K (controlled by K), or if F is under common control with K or shares common business interests with K. If F is related to K, then it is considered a CFC. In that case, to the extent F is located in certain low tax jurisdictions (the average effective tax of F for the recent three years is 17.5% or lower), the CFC's distributable earnings are deemed distributed to the Korean shareholder directly or indirectly holding 10% or more of the CFC's total issued shares or total capital. As a result, the Korean shareholder would be subject to income tax in Korea with respect to all or portions of the CFC's earnings, even before they are actually distributed.

There are certain narrowly carved out exceptions to the foregoing rules in the case where the CFC carries on active business operations in the jurisdiction.

c. Foreign Branches and Partnerships

If a Korean company operates business in a foreign jurisdiction in the form of a branch or a partner in a foreign partnership, it would be considered to engage in such business itself and it would generally be taxed on profits of such operation in Korea and given a foreign tax credit (subject to prescribed limitations) with respect to any foreign income tax paid. Care should be taken in the treatment of foreign entities under Korean tax law in this case, as the Korean foreign entity classification rule is based on its own civil law concept and tends to regard many foreign partnership type entities as corporations for Korean tax purposes, as a result of which a foreign partnership may be unexpectedly treated as a CFC for Korean tax purposes.

d. Cash Repatriation

If the Korean company receives a cash distribution from a foreign subsidiary, it would have taxable dividend income and be subject to corporate income tax in Korea at gradual marginal rates. However, such income would not be included in income to the extent such distribution was previously subject to CFC taxation. Any foreign income tax paid in respect of such distribution or of earning at the foreign subsidiary level would be given direct or indirect foreign tax credit subject to prescribed limitation rules.

In the case of a cash repatriation from a foreign branch or partnership, the Korean company would not be subject to taxation, as it would generally be subject to tax at the time the relevant income arose in the foreign branch or partnership, rather than when it is repatriated in cash.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

If a foreign investor makes an investment in Korean real property, it would be subject to Korean income tax with respect to capital gain from such investment in accordance with Korean domestic tax law. The foreign investor would be subject to withholding tax at the rate of the lower of 11% of the sales proceeds or 22% of the net gain, if the transfer is made to a corporate buyer. It would also be required to file a tax return and pay income tax, which can be offset by the withholding tax already paid as credit. Korean tax treaties do not provide an exemption from such capital gain (gain from the transfer of immovable property).

In the case of a foreign investment in shares in a Korean company, the foreign investor is generally subject to withholding tax, which is exempt under many Korean tax treaties. However, if the relevant Korean company constitutes a "real property holding company" (generally defined as a company with 50% or more of its total assets in the form of real property), then the foreign investor would be subject to Korean tax in the same manner as investing in real property discussed above. Most Korean tax treaties (with a few exceptions) do not provide an exemption from capital gains from the transfer of real property holding company shares.

b. CbC and Other Reporting Regimes

Korea is generally in line with the global trend of increasing the level of information reporting and exchange of information with other jurisdictions. It is already part of the automatic exchange of information regime under the MCAA and a party to the IGA under the U.S. FATCA. It instituted its own FFAR (foreign financing account report) regime.

In relation to transfer pricing, Korea has long maintained extensive documentation requirements in line with the OECD guidelines and recently implemented the BEPS driven additional requirements.

i Master File and Local File

Korean companies or foreign companies with permanent establishments in Korea are obligated to prepare and file a Master File and a Local File within 12 months after the fiscal year end if both of the following conditions are satisfied:

- The Korean entity has annual sales revenue greater than KRW100 billion; and
- The Korean entity annually conducts cross-border related party transactions exceeding KRW50 billion.

Both Master File and Local File must be prepared in or translated into the Korean language. The Master File may initially be submitted in English but must be submitted in Korean within one month after the submission of the English Master File.

ii Country by Country Report ("CbCr")

In cases where a Korean taxpayer meets one of following conditions, the taxpayer is obligated to electronically file a CbCr both in Korean and English no later than 12 months after the fiscal year end of the Korean taxpayer:

- The Korean ultimate parent company's consolidated sales revenue exceeds KRW1 trillion in the previous year;
- The foreign ultimate parent company is not obligated to file a CbCr according to the statutory regulation of the country in which the foreign ultimate parent company is located, and the foreign ultimate parent company's consolidated sales revenue exceeds EUR750 million in the previous year; or
- The foreign ultimate parent company is obligated to file a CbCr according to the statutory regulation of the country in which the foreign ultimate parent company is located, but the Korean tax authority (National Tax Service, "NTS") cannot successfully obtain the CbCr from the cross border tax jurisdiction.

Also, in case where a Korean ultimate parent company or the Korean taxpayer of a foreign multinational company is obligated file a CbCr, the Korean ultimate parent company or the Korean taxpayer must file a "Notification of CbCr Reporting Entity" form no later than six months after the fiscal year end of the Korean ultimate parent company or the Korean taxpayer.

If the taxpayer fails to submit one of the above "BEPS reports" or files them with false or incomplete information, the taxpayer would be subject to a non-compliance penalty of KRW30 million per BEPS report.

10. TRANSFER PRICING

a. Overview

The Korean transfer pricing ("TP") rules (stipulated in the Law for Coordination of International Tax Affairs ("LCITA"), which governs international tax matters between "overseas related parties"), are legislated based on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines).

Accordingly, the Korean TP rules generally purport to be consistent with the underlying principles of the OECD Guidelines. However, as the OECD Guidelines do not have the force of law (unlike the Korean TP rules in the domestic legislation), the Korean tax authority does not always accept a taxpayer's argument if the argument is based only on the OECD Guidelines.

Under the Korean TP rules, if a foreign company directly or indirectly owns at least 50% of the voting shares of a Korean company, or if one transaction party substantially controls the business policy of the other transaction party and at the same time, they have a common interest to adjust income (through an investment in capital, trade in goods or services, grant of a loan, etc. between the two parties), the two parties are considered to be "overseas related parties."

b. Transfer Pricing Methods

Article 5 of the LCITA prescribes five TP methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method, (iv) transactional net margin method, and (v) profit split method. Other reasonable methods can be used in consideration of facts and circumstances of a related party transaction, only if the five methods are not applicable. A taxpayer is allowed to select the most appropriate TP method of the aforementioned methods.

c. Contemporaneous Transfer Pricing Documentation

Whilst companies that are not obligated to submit BEPS reports (i.e. Master File, Local File and CbCr) (please refer to Section 11. for discussions on BEPS reports) are not specifically required to prepare TP documentation by a specific date, in case of a tax audit, taxpayers have an incentive to prepare one by the time of filling the corporate tax return (three months from the fiscal year end date), as underreporting penalty (approximately 10% of the additional tax assessment, or 60% in case of a fraud) resulting from a TP adjustment will be exempt if a taxpayer has prepared and maintains contemporaneous TP documentation by such date. To be eligible for this under-reporting penalty wavier, the TP documentation must be submitted within 30 days upon a request by the tax authorities.

However, even if the contemporaneous TP documentation is prepared and maintained, the underpayment penalty, which is an interest payment in nature, calculated as 0.022% per day of the tax assessment on a TP adjustment would not be exempt.

d. Benchmarking: Searching for Comparables

The National Tax Service ("NTS") is highly likely to request a local benchmark based on the local data of KISLINE if a tested party is a Korean company. Also, the NTS has its own formula to calculate the interquartile range prescribed in rulings under the LCITA.

e. Advance Pricing Agreement ("APA") opportunity

TP documentation cannot be an absolute proof that a taxpayer has conducted intercompany transactions pursuant to the arm's length principle, which means that such documentation cannot prevent tax audits. Accordingly, if a taxpayer would like to have a binding arm's length rate approved by the NTS (i.e. avoid tax audits), only concluded unilateral, bilateral or multilateral APAs allow the taxpayer to avoid future transfer pricing disputes.

f. Transfer Pricing Scrutiny

Recently, when the NTS conducts a tax audit, the likelihood of overseas related party transactions being reviewed during the tax audit has increased. Also, during the audit, the NTS often requests TP documentation. Generally, if cross border transactions are reviewed as part of a tax audit, the tax auditors could challenge the TP method used by the taxpayer and would impose an alternative TP method. Even if the tax auditors acknowledge and accept the TP method selected by the taxpayer, they are highly likely to challenge the comparables selected by the taxpayer.

The NTS closely monitors companies whose profitability suddenly drops, or profits fluctuate over several years. Also, the NTS is likely to scrutinise companies paying high royalties or high management service fees abroad, having financial transactions with overseas related parties or undergoing significant business restructuring.

g. Safe Harbour Rules

A safe harbour rule for interest rates applicable to cross border intercompany borrowing and lending transactions is stipulated in the LCITA.

According to Article 2-2(3) of the Ministerial Decree, such financial transactions are determined to be conducted under the arm's length principles for the Korean transfer pricing purposes if a Korean taxpayer applies following interest rates (i.e. deemed arm's length interest rates):

- Where a Korean taxpayer lends funds to its overseas related party: the bank overdraft interest rate as prescribed by Article 43(2) of the Ministerial Decree of the Corporate Income Tax; or
- Where a Korean taxpayer borrows funds from its overseas related party: 12 month Libor of the loan currency as of the last day of the preceding fiscal year plus 1.5%, if the relevant Libor is not available, the USD based Libor shall apply.

According to the tax law amendment in 2020, the Korean TP rules have adopted a simplified approach for low value adding intragroup services between a domestic taxpayer and its overseas related party in line with BEPS Action 8 - 10.

To qualify as low value adding services, following requirements shall be met under Articles 6-2(2) and (3) of the Presidential Decree.

- Are of a supportive nature and have no direct relation to the core business activities of the group;
- Do not involve any of the following activities: a) research and development, b) raw material purchase, manufacturing, sales, marketing and promotion activities, c) financial transactions, insurance and reinsurance d) extraction, exploration or processing of natural resources;
- Do not require the use or creation of unique and valuable intangibles;
- Do not involve the assumption or control of significant risk by the service provider;
- No services of similar nature are rendered or received from a third party.

If the arm's length price of the low value adding intragroup service is calculated at 5% markup on all direct and indirect costs incurred for rendering the service, it would be deemed that such service fee is determined at the arm's length price for Korean TP purposes.

The arm's length price of the low value-adding intra-group service shall be 5% markup on all direct and indirect costs incurred for rendering or receiving services under the Korean transfer pricing purposes.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

After the acquisition takes place, corporate consolidations and liquidations of redundant entities may be considered. In the case of a Korean corporation and its wholly owned Korean subsidiary, a consolidated tax return or dividend received deduction ("DRD") should be investigated, in order to determine whether the existing entities could be maintained without giving rise to a significant tax leakage. If a corporate consolidation is desired, a merger between the parent and its wholly owned subsidiary could be affected in a tax free manner with minimal requirements. Even if it does not involve a parent and a subsidiary, a tax free merger between two Korean corporations could generally be affected to consolidate related companies pursuant to the prescribed requirements analogous to the comprehensive stock transfer/exchange discussed above.

a. Intellectual Property

Global companies after acquisition may wish to move intellectual property ("IP") or change licensing arrangements within the group for various reasons. A transfer of IP out of Korea would give rise to corporate income tax for the transferring Korean entity. If the consideration for the IP transfer is determined based (contingent) on the productivity, use or disposition of such property, it may in some cases be recharacterised as royalties, as opposed to capital gain, which would be afforded a very different tax treatment.

Transfers or licensing of IPs between related parties tend to be strictly scrutinised by the Korean tax authority from the valuation and transfer pricing perspective and require special attention in planning.

b. Special Tax Regimes

If any acquired company holds a special tax status (e.g. qualified entity for a local tax exemption, or collective investment vehicle under the financial regulations), care should be taken to maintain the qualification requirements to continue the status. There are various types of foreign investment regimes, whereby foreign invested companies meeting certain criteria are given corporate income tax exemption or reduction and customs and local tax benefits during a prescribed period; however, such benefits pertaining to corporate income tax were phased out from 2019.

c. Use of Hybrid Instruments

Use of hybrid instruments may be considered, subject to careful consideration of the anti-abuse rules regarding the characterisation and interest deductibility discussed in Sections 7 and 12.

d. Principal/Limited Risk Distribution or Similar Structures

Various forms of distribution structure may be implemented, provided that the economic substance (assets, functions, and risks) are in line with the structure chosen.

12. OECD BEPS CONSIDERATIONS

Korea has been implementing the OECD recommendations in the BEPS Action Plan into domestic law, and these amendments to domestic tax law (made as a result of the BEPS Project) have a direct impact on various forms of M&A transactions and global businesses of multinational enterprises. Below is a summary of the recent changes specifically relating to the OECD BEPS Project.

a. Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information ("CRS MCAA")

The CRS MCAA, initially designed to combat cross border tax evasion in recognition of the need for an automatic exchange of financial information, is a multilateral framework agreement to implement the OECD Common Reporting Standard ("CRS"). Korea was one of the first countries to sign and activate the CRS MCAA: it signed the CRS MCAA in 2014 and commenced an automatic exchange of financial information with 45 countries in September 2017. The number of countries that are exchanging information with Korea under the CRS MCAA is increasing every year. As of November 2021, a total of 109 countries are exchanging financial information with Korea under the CRS MCAA.

b. Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI")

Korea signed the BEPS MLI on 7 June 2017 and the National Assembly approved ratification of the MLI on 10 December 2019, so that on 1 September 2020, the MLI entered into force in Korea. In addition to making amendments to domestic tax law and policy, Korea, by signing the MLI, ensured its bilateral tax treaties are swiftly modified to implement the treaty related measures resulting from the BEPS Project. Korea chose to opt in to only a minimum set of MLI provisions at the present but is expected to expand the scope gradually in the future.

c. Transfer Pricing Reports

Korea implemented most of the recommendations from Action 13 (transfer pricing documentation) through the tax law amendments in 2015. Please refer to Section 9. for detailed discussion on this topic.

d. Limitation on Deductibility of Interest Payments

Korea introduced a new rule to limit the deductibility of interest payments in order to combat tax avoidance by multinational enterprises through an adjustment of debt in a group entity and related interest payments. From 2019, the new rule operates to deny the deduction for the amount of net interest expense (paid to an overseas related company) which exceeds 30% of the taxable income (before depreciation and interest, "EBITDA") of the Korean company.

Between this rule and the existing thin capitalisation rule, the rule that results in a larger amount of deduction would apply over the other. Also, this rule would take precedence over the new BEPS driven hybrid mismatch rule (discussed below).

e. Neutralising the Effects of Hybrid Mismatch Arrangements

As part of the 2017 tax law amendments, Korea introduced a new rule which limits the deduction of expenses relating to cross border hybrid financial instrument transactions between a Korean corporation (including the Korean branch of a foreign corporation) and its foreign related party. As noted in Section 6, where a payment made in relation to a hybrid financial instrument is wholly or partly not taxable in the counterparty jurisdiction, the new rule applies to deny the deduction for the non-taxable portion.

f. Abolishment of the Tax Exemption for Foreign-Invested Companies

In order to improve the transparency of Korea's tax incentive schemes and to provide a level playing field between domestic and foreign capital by revising harmful preferential tax regimes, Korea repealed the corporate income tax exemption previously available for foreign-invested companies engaging in the new growth sector businesses and in designated foreign investment zones and free economic zones.

g. Expanded Scope of Permanent Establishment

As part of the 2018 tax law amendments, the scope of foreign companies' PE has been broadened and the source country taxation of foreign company income has been strengthened, reflecting the updates made to the 2017 OECD Model Tax Convention incorporating the BEPS Project initiatives. Accordingly, places used solely for the purpose of purchasing/storing/maintaining products are only excluded from the scope of PE if the activity related to the relevant place is preparatory or auxiliary in nature. Further, a foreign company may be deemed to have a PE in Korea even if its agent does not have legal authority to conclude contracts on behalf of the foreign company, to the extent the agent plays an important role leading to the conclusion of contracts by the foreign company.

h. Summary of domestic legislative changes that have been made/proposed in relation to the OECD BEPS Action Plan (as of 2018):

Action Plan		BEPS Issues	Current Status
1	Digital economy	Tax challenges of the digital economy including difficulties posed by the digital economy (e.g. online businesses) for the application of existing international tax rules.	(2014) VAT imposed on applications provided in offshore open market. (2018) Scope of VAT imposition expanded (e.g. cloud computing, advertising, intermediary services). (2020) The Korean government announced that it will keep pace with the OECD's plan to implement Pillars One and Two by 2023.
2	Hybrid mismatch arrangements	Hybrid mismatch arrangements used to achieve double non-taxation by exploiting differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions.	(2017) Rules introduced to neutralise the effects of hybrid mismatch arrangements.
3	CFC rules	Artificial profit shifting and long-term deferral of taxation by taxpayers with a controlling interest in a foreign subsidiary by not distributing the subsidiary income to the controlling entity.	CFC rules already in place (CFC income treated as a deemed dividend). (2016) Scope of CFC expanded (strengthened 15% ETR test).
4	Interest deductions	Base erosion in the source country through the use of interest expenses, including the use of debt to achieve excessive interest deductions.	(2017) New interest deduction limitation rule introduced.

Action Plan		BEPS Issues	Current Status
5	Harmful tax practices	Competitive preferential tax regimes benefiting income from geographically mobile activities (IP).	(2017) Enabled the exchange of APA (Advance Pricing Arrangement) information between countries. (2018) Abolishment of the corporate income tax exemption previously available for foreign-invested companies.
6	Treaty abuse	Claiming treaty benefits in situations where these benefits were not intended to be granted (e.g. through the establishment of a conduit company).	(Continuous) Incorporated when entering into or amending tax treaties > Limitation on access to tax treaty benefits.
7	PE status	Artificial avoidance of PE status.	(2018) Broadened the scope of PE.
8-10	Transfer pricing	Profit shifting to low taxed jurisdictions through intangibles and high risk transactions.	(2018) Amendments regarding substance over form and intangibles ("DEMPE").
11	BEPS data analysis	Tax authority does not have sufficient information on tax avoidance schemes used by multinational enterprises.	<Considering legislative changes>.
12	Disclosure of aggressive tax planning		
13	TP documentation	Tax authority does not have sufficient TP information.	(2015) Master File & Local File. (2016) Country by country report.
14	Dispute resolution	Obstacles preventing countries from solving treaty related disputes.	(2016) Allowed the application for a Mutual Agreement Procedure (MAP) in the source country.
15	MLI	Takes a long time to implement the BEPS recommendations into bilateral tax treaties.	(2017) Signed the MLI. (2019) Approved ratification of the MLI. (2020) MLI entered into force in Korea on 1 September 2020.

13. ACCOUNTING CONSIDERATIONS

In the case of both combinations and divestitures, an important consideration would be whether the relevant transaction would require the recognition of profit/loss. If it is treated as a recognition event, the acquired assets would have to be recorded at fair market value. If not, then their book value would be carried over. As a general matter (subject to exceptions), a combination or divestiture transaction would be treated as recognition event and require the determination of the market value; however, if the target remains under the same controlling party after the transaction, this would not be the case. Please also refer to the discussion of accounting rules in Section 3. above.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Under Korean corporate law, a corporation may make a distribution to shareholders out of (i) paid-in capital (generally speaking, representing the aggregate of the par value of all shares issued and outstanding), (ii) capital surplus (consisting of share premium, and other items), but only to the extent the capital surplus exceeds 1.5 times the paid in capital, and (iii) distributable earnings (retained earnings, less a legally required reserve and certain other items).

Distributions out of (iii) would be treated as dividends and trigger income tax for the shareholders. Distributions out of (i) would be treated as capital reduction and would be treated as dividend (and income tax) for shareholders, only to the extent that the amount distributed exceeds the shareholders' tax basis in the shares. Distributions out of (ii) would be treated as a reduction in the capital surplus and would generally not be treated as dividends for the shareholders.

b. Substance Requirements for Recipients

Korean tax law follows the substance over form principle and endeavours to apply taxation based on "substance" (not mere formality) of the transaction and in reference to the "substantive" (as opposed to nominal) owner of income. Under the relevant case law, the same principle is held to apply in the context of applying tax treaties. In order for a foreign recipient of Korean source income to claim a treaty benefit, it has to meet the rigorous "substance" requirement. That is, it needs to substantiate its status as "substantive owner," by showing its establishment and involvement in the transaction were for a valid business purpose not a tax avoidance purpose and it has a sufficient level of physical and human resources in its residence jurisdiction, has a substantial business operation and is generally subject to income tax in its jurisdiction.

c. Tax Rulings and Clearances

Tax rulings are available in Korea to assist taxpayers with unclear tax issues. There are a (regular) tax ruling and an advance tax ruling. Taxpayers applying for either ruling are required to disclose their identity, but an advance tax ruling requires more details about the parties and transaction. An advance tax ruling needs to be requested before the transaction actually takes place and, once issued, is binding on the relevant parties.

Tax rulings are widely used in the context of M&A transactions to obtain certainty on unclear tax positions. When posed with questions that are fact intensive or controversial (e.g. issues pending in the judicial courts), however, the tax authority may refuse to respond, delay the response or respond in not a meaningful way (responding by just reciting the legal requirements). Accordingly, practitioners would usually have a preliminary discussion with the responsible tax authority before proceeding with the formal application.

Taxpayers could obtain tax clearance certificates issued by the responsible tax authority, certifying that tax returns and tax payment that came due have been filed and paid. Tax clearance certificates could be useful for verifying the taxpayer (e.g. the target company to be acquired) has been generally compliant with their tax obligations, by filing tax returns and paying taxes specified in the tax returns; however, they do not verify whether tax returns filed were accurate, and therefore, do not assess the possibility of any contingent tax liability.

15. MAJOR NON-TAX CONSIDERATIONS

When considering the acquisition of a Korean target, the form of acquisition should be carefully considered. Careful examination of the level of compliance and internal control over the business operation should be made in the process of determination. If the target has a substantial operating history, with the possibility of contingent liabilities, the acquiror would usually prefer setting up a new Korean entity to acquire the target's business in the form of an asset transfer, to minimise the risk.

The Korean legal system provides for regulations governing various industries, some of which could be quite complex; the regulatory environment and anticipated change (in addition to the business environment) concerning the target's business should be taken into consideration. It should also be noted that Korea has a rigid labour law regime with many pro-labour provisions designed to protect workers' rights.

There are a number of regulatory rules that could restrict the contemplated transaction or give rise to government reporting or public disclosure requirements, such as antitrust, foreign ownership restrictions (e.g. telecom, aviation, media, and defence industries), foreign exchange regulations and trading regulations concerning shares in listed companies, to name a few. These issues should be carefully reviewed in the transaction structuring stage.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Arab Emirates	5/10	10	10	
Argentina	20	14 / 20	20	[1] [27] [28]
Australia	15	15	15	
Austria	5 / 15	10	2 /10	[2] [3]
Belgium	15	10	10	
Brazil	10	10 / 15	10 / 25	[4] [5]
Cambodia	10	10	10	
Canada	5 / 15	10	10	[2]
Chile	5 / 10	10 / 15	5 / 15	[2] [6] [7]
China	5 / 10	10	10	[2]
Colombia	5 / 10	10	10	[8]
Croatia	5 / 10	5	0	[2]
Cyprus	20	14 / 20	20	[1] [27] [28]
Czech Republic	5	5	0 / 10	[9]
Denmark	15	15	10 / 15	[10]
Finland	10 / 15	10	10	[2]
France	10 / 15	10	10	[11]
Germany	5 / 15	10	2 / 10	[2] [3]
Greece	5 / 15	8	10	[2]
Hungary	5 / 10	0	0	[2]
India	15	10	10	
Indonesia	10 / 15	10	15	[2]
Ireland	10 / 15	0	0	[11]
Italy	10 / 15	10	10	[2]
Japan	5 / 15	10	10	[2]
Luxembourg	10 / 15	10	10 / 15	[2] [12]
Malaysia	10 / 15	15	10 / 15	[2] [13]
Malta	5 / 15	10	0	[2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Mauritius [1]	20	14 / 20	20	[27] [28]
Mexico	0 / 15	5 / 15	10	[14] [15]
Netherlands	10 / 15	10 / 15	10 / 15	[2] [16] [17]
Norway	15	15	10 / 15	[17]
Philippines	10 / 25	10 / 15	10 / 15	[1] [18] [19] [20]
Poland	5 / 10	10	5	[11]
Portugal	10 / 15	15	10	[2]
Puerto Rico	20	14 / 20	20	[1] [27] [28]
Romania	7 / 10	10	7 / 10	[2] [17]
Russia	5 / 10	0	5	[21]
Serbia	5 / 10	10	5 / 10	[2] [22]
Singapore	10 / 15	10	5	[2]
Slovakia	5 / 10	10	0 / 10	[2] [9]
Slovenia	5 / 15	5	5	[2]
South Africa	5 / 15	10	10	[1] [2]
Spain	10 / 15	10	10	[2]
Sweden	10 / 15	10 / 15	10 / 15	[2] [23] [17]
Switzerland	5 / 15	5 / 10	5	[11] [15]
Turkey	15 / 20	10 / 15	10	[2] [24]
Turkmenistan	10	10	10	
United Kingdom	5 / 15	10	2 / 10	[2] [3]
United States	10 / 15	12	10 / 15	[1] [25] [26]
Venezuela	5 / 10	5 / 10	5 / 10	[11] [15] [7]
Vietnam	10	10	5/15	

Footnotes	
1	A 10% local income surtax applies in addition to the rates indicated above.
2	Dividends - Lower rate applies in case of equity ownership of 25% or more.
3	Royalties - 2% rate applies to royalties paid for use of or the right to use industrial, commercial, or scientific equipment.
4	Interest - 10% rate applies if the loan period extends to 7 years or more, the recipient is a financial institution and the loan is used for certain designated purposes.
5	Royalties - 25% rate applies to royalties associated with the use of trademarks or trademark rights.
6	Interest - 10% rate applies when a recipient of interest income is a bank or an insurance company.
7	Royalties - 5% rate applies to royalties paid for the use of or the right associated with industrial, commercial, or scientific equipment.
8	Dividends - Lower rate applies in case of equity ownership of 20% or more.
9	Royalties - 0% rate applies to royalties paid for the use of academic rights.
10	Royalties - 10% rate applies to royalties paid for the use of or the right associated with industrial activities.
11	Dividends - Lower rate applies in case of equity ownership of 10% or more.
12	Royalties - 10% rate applies if it is for the use of or the right to use industrial, commercial, and scientific equipment or information.
13	Royalties - 15% rate applies if royalties are for use of or the right to use cinematography films or tapes for radio or television broadcasting or any copyright of literary or artistic work.
14	Dividends - 0% rate applies in case of equity ownership of 10% or more.
15	Interest - 5% rate applies if a recipient is a bank.
16	Interest - 10% rate applies if the term of the loans exceeds 7 years.
17	Royalties - Lower rate applies if it is for the use of or the right to use a patent, trademark, design, or secret formula, or industrial, commercial, and scientific equipment or information.
18	Dividends - 10% rate applies in cases of equity ownership of 25% or more, or dividend paid by a resident company engaged in a preferred pioneer area and registered with the Board of Investment.
19	Interest -10% rate applies in cases where the interest is paid in respect of public offering of bonds, debentures, or similar obligations or interest paid by a company that is a resident of the Philippines, registered with the Board of Investment, and engaged in preferred pioneer areas of investment under the investment incentive laws.
20	Royalties - 10% rate applies in case of royalties paid by a company that is a resident of the Philippines, registered with the Board of Investment, and engaged in preferred pioneer areas of investment under the investment incentives laws.
21	Dividends - 5% rate applies if a recipient holds 30% or more of equity interest in the amount of at least USD100,000.
22	Royalties - 5% rate applies to royalties for use of copyrighted literature and music.
23	Interest -10% rate applies when a recipient of interest income is a bank and income is connected with a loan with a term in excess of seven years.
24	Interest - 10% rate applies if the term of the loan exceeds two years.

Footnotes	
25	Dividends - 10% rate applies if equity ownership is 10% or more and not more than 25% of the gross income of a paying corporation for a preceding tax year consists of interest or dividends.
26	Royalties - 10% rate applies to royalties for use of copyrighted literature, music, films, and television or radio broadcasts. Otherwise, 15% rate applies.
27	Interest - 14% rate applies if interest arises from bonds issued by a Korean company or government bodies.
28	Royalties - Fees arising from rental of industrial, commercial, scientific equipment, etc. are classified as rental income subject to 2% withholding tax.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax registration certificates - All business places under the VAT Law.
2	Tax Due Diligence	General	Organisation chart(including employees information).
3	Tax Due Diligence	General	Articles of incorporation.
4	Tax Due Diligence	General	Minutes of shareholders' meetings for the last 7 years.
5	Tax Due Diligence	General	Minutes of BOD meetings for the last 7 years.
6	Tax Due Diligence	General	Policy of payroll and bonus, retirement benefit to directors.
7	Tax Due Diligence	General	Documents for company policy on employees benefits.
8	Tax Due Diligence	General	Opinion letters or memorandums for tax advice rendered by outside tax advisors, correspondence with the tax authorities (e.g. tax rulings, TP reports).
9	Tax Due Diligence	General	National tax audit files, if any.
10	Tax Due Diligence	General	Documents regarding national tax appeal , if any.
11	Tax Due Diligence	General	National tax clearance certificate (the most recent date).
14	Tax Due Diligence	Financials	Financial statements for last 7 years.
15	Tax Due Diligence	Financials	Annual reports for last 7 years.
16	Tax Due Diligence	Financials	General ledgers for last 7 years and the current year to date.
17	Tax Due Diligence	Corporate Income Tax	Hardcopy or softcopy of corporate income tax returns (including amended returns).
18	Tax Due Diligence	Corporate Income Tax	Description of major transactions between the Company and related parties for the last 7 years. [More detailed information on notes to financial statements in audit reports].
19	Tax Due Diligence	Corporate Income Tax	Service agreement for shopping mall business development and the documents proving the agreed services have been actually provided as disclosed on notes to financial statements in audit reports.
20	Tax Due Diligence	Corporate Income Tax	Agreement on borrowings from related parties as disclosed on the notes to financial statements in audit reports.
21	Tax Due Diligence	Corporate Income Tax	Financial lease agreements with related parties as disclosed on the notes to financial statements in audit reports.
22	Tax Due Diligence	Value Added Tax	VAT returns with supplementary documents for the last 7 years.
23	Tax Due Diligence	Value Added Tax	Amended VAT returns, if any.

Nº.	Category	Sub-Category	Description of Request
24	Tax Due Diligence	Value Added Tax	Contracts for purchase of real property and related VAT transaction summary for the last 7 years.
25	Tax Due Diligence	Withholding Tax(ITA, CITA)	Monthly withholding tax report for the last 7 years.
26	Tax Due Diligence	Withholding Tax(ITA, CITA)	A full set of the form of application for reduced treaty WHT rate and supportive documents which were collected from foreign recipients, if any.
33	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Description and list of local taxes reported and paid during the period of the last 7 years (related to Gross real estate tax, Property tax, Deemed Acquisition tax, etc.).
34	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Details on acquisition of fixed assets and real property and related deemed acquisition tax calculation, filing and payment for the last 7 years.
35	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Local tax clearance certificate (the most recent date).
36	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Certificate of local taxes imposition for the last 7 years.
37	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Documents regarding local tax appeal, if any.
38	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Local tax audit files, if any.
39	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Details of local tax exemption for the last 7 years.

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