



# Newsletter

January 2009

*This newsletter is prepared by Horwath Choongjung (Choongjung Accounting Corp.) and intended to provide foreign investors with an update on tax law changes in Korea and other related subjects of special interests to foreign investors. The information provided herein should not form a basis of any decision as to a particular course of action, nor should it be relied upon as a substitute for a detailed advice in individual cases.*

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*(You may find this newsletter and other items of interest at <http://www.horwath.co.kr>)*

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## Horwath Choongjung News

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### 1. K-IFRS Seminar held successfully in November 2008

Horwath Choongjung hosted a K-IFRS (International Financial Reporting Standards adopted by Korea) seminar on November 27, 2008, which was held at the international convention hall of Korea Chamber of Commerce and Industry (“KCCI”). The seminar was successfully concluded with attendance of about 400 managerial personnel in accounting, tax and IT departments of the listed companies in Korea.

The seminar was sponsored by the Korea Exchange (KRX) and KCCI and provided the participants with the opportunities of finding a direction of management strategies related to enhancement of corporate value, strategic planning of accounting and tax, and IT solution selection in adoption of K-IFRS, which is now a hot issue of the listed companies. The participants evaluated the seminar was very unique and helpful in delivering comprehensive and strategic contents related to the adoption of K-IFRS.

The seminar proceeded with the following sessions and agenda:

- Enhancement of Corporate Value in adoption of K-IFRS
- Strategic Planning of Accounting in adoption of K-IFRS
- Strategic Planning of Tax in adoption of K-IFRS
- Management Strategies of IT Solution in adoption of K-IFRS
- Presentation of EFIS (IFRS solution) developed by Duzon DASS Co., Ltd.

In addition to the foregoing sessions, HnC Partners, the associate partner of the seminar, ran its IT solution booth at the reception hall and demonstrated how to use its iSiD solution.



## 2009 Tax Law Changes for Corporation

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We summarized below some of the major changes to keep you up-to-date on tax law changes in Korea.

### 1. Reduction in Corporate Tax Rates

Under the revised Corporate Tax Law (“CTL”), the corporate tax rates and the range of the tax brackets shall be changed as below.

Tax base	Tax rates (FY2008)	Tax rates (FY2009)	Tax rates (FY2010 and thereafter)
KRW 200 million or less	11%	11%	10%
Over KRW 200 million	25%	22%	20%

(Note) 10% of income tax will be imposed additionally as a resident surtax.

### 2. Introduction of Consolidated Corporate Tax Return System

According to the revised CTL, the consolidated tax return system (“CCTRS”) shall be introduced from 2010.

Under the CCTRS, a corporation may file the consolidated return by combining its own taxable income (or losses) with those of its subsidiaries in which the corporation has 100% shares and also pay the corporate tax in a consolidated manner.

### 3. Introduction of Partnership Taxation

Under the revised Special Tax Treatment Control Law of Korea (“STTCL”), a partnership taxation scheme has been enforced from the fiscal year starting on or after January 1, 2009.

According to the revised STTCL, certain type of entities (such as an association established by two (2) or more members under the Civil Law, a personal holding company under the Commercial Code (i.e., Hapmyong Hoesa or Hapja Hoesa), or certain professional firm such as a law firm or an accounting firm under the relevant laws) may elect to be treated as a partnership, being a pass-through entity.



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If an entity elects the partnership taxation, the entity is required to pay the corporate income tax on “quasi” liquidation income in the same manner as the liquidation income from the dissolution of the entity.

Upon election, it shall not be taxed at the entity level, but the partners shall be taxed on their shares of income calculated based on their profit / loss allocation ratios instead.

#### 4. Reduction in Withholding Tax Rate for certain Korean Source Income

Before the revision of the CTL, the Korean sourced interest income, dividend, royalty, and capital gains from share or real estate transfer (in the case of income based taxation) of a non-resident (including a foreign corporation) were 25%.

According to the revised CTL, these withholding tax rates shall be reduced to 20% and these changes shall be effective from the payment to be made on or after January 1, 2009.

10% of the corporate tax or income tax liabilities shall be withheld additionally as a resident surtax.

#### 5. Exemption of Underreporting Penalty Tax for Transfer Pricing Adjustment

Before the revision of the International Tax Coordination Law of Korea (“ITCL”), underreporting penalty tax (i.e., normally 10% of the underreported corporate tax) shall be imposed with regard to the transfer pricing adjustment if the transfer pricing adjustment is made and relevant taxable income is increased accordingly through a tax audit or a filing of amended corporate tax return voluntarily, unless it is affirmed through mutual agreement procedure that the taxpayer is not negligent over the difference between the transfer price adopted and the arm’s length price (for the unilateral APA, if the same is affirmed by the National Tax Service (“NTS”)).

However, thanks to the tax law revision, the exemption of underreporting penalty tax for transfer pricing adjustment may not be imposed if a taxpayer maintains documents supporting the selected arm’s length price calculation method which was adopted in filing corporate tax return and it is affirmed by the Korean tax authorities that the arm’s length price calculation method is selected based on reasonable judgment.



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### 6. Extension of Utilizable Period of Tax Loss Carried Forward

Before the revision of the CTL, the tax loss shall be carried forward for five years. Under the revised CTL, tax losses incurred on or after 2009 may be carried forward for 10 years. In this case, the record retention period shall also be extended for the same period.

Tax loss carry back is allowed for 1 year and for small or medium sized companies only.

### 7. Introduction of Advance Ruling System

According to an Administrative Regulation that was announced by the NTS recently, an advance ruling system came into force on October 1, 2008 to provide taxpayers with a degree of certainty and enhance the clarity of the tax law, as well as business predictability and legal stability for investors.

An advance ruling is a written interpretation of the tax related inquiries for the transactions specified in the application made by an applicant. Not only Korean resident but also non-resident of Korea can apply for advance ruling to the Commissioner of the NTS. The application should be submitted by the tax filing due dates for national taxes.



## 2009 Tax Law Changes for Individual

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### 1. Reduction in Individual Income Tax Rates

Under the revised Individual Income Tax Law (“IITL”), the income tax rates will be reduced gradually in order to relieve an individual taxpayer’s tax burden as shown below.

Tax base	Tax rates (Year 2008)	Tax rates (Year 2009)	Tax rates (Year 2010 and thereafter)
KRW 12 million or less	8%	6%	6%
Over KRW 12 ~ 46 million	17%	16%	15%
Over KRW 46 ~ 88 million	26%	25%	24%
Over KRW 88 million	35%	35%	33%

(Note) 10% of income tax liability will be imposed additionally as a resident surtax.

### 2. Curtailement in Scope of Taxable Foreign Source Income earned by Foreigner

Before revision of the IITL, a foreigner who is a tax resident of Korea was liable for income tax on foreign source income as well as on Korean source income.

Under the revised IITL, in the case where the period that a foreigner, who is a tax resident of Korea, has his address or abode in Korea does not exceed 5 years in aggregate during the past 10 years from the end of concerned tax year, his/her foreign source income incurred from January 1, 2009 shall be taxed in Korea only if such income is paid by a Korean entity or an individual or such income is remitted into Korea.

### 3. Decrease in Flat Tax Rate for Foreign Employees

Before the revision of the STTCL, foreign (non-Korean) executives or employees (“Foreign Workers”) are allowed to file their individual income tax returns by electing either to get additional 30% income deduction or to apply a flat tax rate of 17% on their gross salaries without getting any deductions.

Under the revised STTCL, the flat tax rate for Foreign Workers shall be reduced to 15% from the salary income earned since January 1, 2009 in the case where they elect the flat rate taxation for their income tax returns.



# Tax Treaty Development

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## 1. Saudi Arabia

The tax treaty entered by and between Saudi Arabia and Korea on March 24, 2007 came into force on December 1, 2008. According to the tax treaty, withholding taxes (including resident surtax) are limited to 5% for interest income and 5% for royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment (10% in all other cases). Regarding dividend income, 5% withholding tax rate shall be applied on gross dividend income if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying dividends, and in all other cases, 10% withholding tax rate shall be applied.

## 2. Iceland

The tax treaty entered by and between Iceland and Korea on May 15, 2008 came into force on October 23, 2008. According to the tax treaty, withholding taxes (including resident surtax) are limited to 10% for interest income and 10% for royalties. Regarding dividend income, 5% withholding tax rate shall be applied on gross dividend income if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying dividends, and in all other cases, 15% withholding tax rate shall be applied.

## 3. Azerbaijan

The tax treaty entered by and between Azerbaijan and Korea on May 19, 2008 came into force on November 25, 2008. According to the tax treaty, withholding taxes (including resident surtax) are limited to 10% for interest income and 7% for dividend income. Regarding royalties, the 5% withholding tax rate shall be applied for the use of any patent, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, and in all other cases, the 10% withholding tax rate shall be applied.



## New Tax Ruling

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We summarized below an interesting new tax ruling issued recently.

### 1. Income Classification of Transfer of Beneficiary Certificate

In the case where a foreign company transfers its beneficiary certificate of the investment trust stipulated under Article 17, Paragraph 1 (5) of IITL to a third party, income earned from such transfer shall be classified as ‘income from the transfer of other securities (defined)’ in accordance with Article 93 (10) of the CTL and Article 132, Paragraph 8 (4) of Presidential Decree of the CTL (Jaegookjo – 145, 2008.07.16).

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