DOING BUSINESS IN THE REPUBLIC OF KOREA

April 2016

MAZARS

MAZARS IN THE REPUBLIC OF KOREA

Mazars SeBit traces its roots back to 2000, when it was first established to provide a full range of professional services to multinationals doing business in The Republic of Korea. Since then, the firm has grown to become one of the top Certified Public Accounting firms in The Republic of Korea. It has developed strong relationships with its clientele, which comprises both international and local clients, including private and public listed companies.

You can draw a wealth of advantages from Mazars' global and integrated partnership offering, particularly of benefit to companies aiming for international expansion. Mazars international partners know each other well, work together and can personally recommend their counterparts in other offices around the world, who will ensure solutions that fit your needs.

The Korean government actively endeavours to encourage direct investments from foreigners. For the technology-intensive industries and industrial support service industries especially, it provides tax exemption and reduction benefits, according to their investment amounts.

MAZARS IS AN INTERNATIONAL, INTEGRATED AND INDEPENDENT ORGANISATION SPECIALISING IN AUDIT, ADVISORY, ACCOUNTING, TAX AND LEGAL SERVICES. AS AT 1ST JANUARY 2016, THE GROUP OPERATES IN 77 COUNTRIES, AND DRAWS ON THE EXPERTISE OF 17,000 PROFESSIONALS TO ASSIST COMPANIES – MAJOR INTERNATIONAL GROUPS, SMES, PRIVATE INVESTORS – AND PUBLIC BODIES, AT EVERY STAGE IN THEIR DEVELOPMENT. MAZARS ALSO HAS CORRESPONDENTS AND REPRESENTATIVE OFFICES THAT GIVE THE CAPACITY TO SERVE CLIENTS TO THE SAME HIGH QUALITY STANDARDS IN A FURTHER 21 COUNTRIES.

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This guide has been prepared for the assistance of those interested in doing business in The Republic of Korea. It does not exhaustively cover the subjects it treats, but it is intended to answer some of the important broad questions that may arise. When specific issues arise in practice, it will often be necessary to consider the relevant laws and regulations and to obtain appropriate professional advice.

GENERAL INFORMATION

1.1 Geography

The Republic of Korea is located in Far East Asia, east of China, west of Japan, and south of North Korea. It has a land area of 100.21 thousand km^2.

1.2 Population

As of 2015, the population of the Republic of Korea is 50 million, mainly composed of native Koreans, and uses Korean as the official language.

1.3 Climate

As a country in the temperate climate zone, it has four distinct seasons of spring, summer, autumn, and winter. The temperature change between different seasons varies distinctively: the average temperature is 36 degrees Celsius in the summer, whereas it drops to negative 10 degrees Celsius in the winter.

1.4 Political system

The Republic of Korea is a democratic republic. Its administration is a presidential system and a president is elected by direct citizen vote with a five year single-term tenure. The legislature is The National Assembly and the members of the National Assembly are elected with a four year tenure. The Judiciary is composed of three tiers, the District Court, the High Court, and the Supreme Court as well as the Constitutional Court which verifies whether a verdict complies with the constitutional law. The most common structure of political parties is: one ruling party of the President and two or three opposition parties.

1.5 Currency

The currency is the Korean won (KRW) and the average exchange rate, as of January 1st, 2015, is 1 US dollar to KRW 1,100.

1.6 Language

The official language is the Korean language, using Hangul (Korean alphabet). English is used in business settings with foreigners. The number of people fluent in English language is limited but steadily increasing.

1.7 Economy

The Korean economy is highly dependent on foreign trade. The main industrial focus is on the manufacturing and exporting from the heavy industries, chemical, automobile, ship building, steel, construction, etc., and from the technology-intensive industries of home appliance, cellular phone, semiconductor, computer, etc. Recently, biotechnology, medical devices, aviation, spacecraft, robot, and renewable energy enterprises are emerging as the new core businesses.

1.8 Legal system

The legal system is the civil law system and has its roots in German and Japanese law systems.

1.9 Time

The Republic of Korea is 9 hours ahead of GMT. There is no Daylight Saving Time in the Republic of Korea. Time differences with other main capital cities are as follows:

- 8 or 9 hours ahead of London
- 7 or 8 hours ahead of Paris, Madrid, Berlin, Rome
- 14 or 15 hours ahead of New York
- 2 hours ahead of Singapore and Bangkok
- 1 hour ahead of Beijing
- No difference with Tokyo

1.10 Business hours

Office hours are generally 9:00 am to 6:00 pm, Monday to Friday.

1.11 Communications

Domestic travel is possible in one-day via airplanes, high speed railroads, railroads and the express highway. Seoul has a convenient public transportation system with the subway, buses and taxis, connecting the whole nation.

BUSINESS ORGANISATIONS AVAILABLE TO FOREIGNERS

There are four ways for a foreign corporation or a foreign individual to enter domestic enterprise;

it has to establish:

- a subsidiary
- an individual entrepreneur
- a branch or
- a liaison office

2.1 Regulation of foreign investment

Entering the market through establishing a subsidiary or as an individual entrepreneur is subject to the Foreign Investment Promotion Act. Also, entering the market through establishing a local branch or office is subject to the Foreign Exchange Transaction Act.

Foreign business restrictions fall into two categories: prohibited activities and partially restricted activities. Prohibited activities include: public interest industries such as postal services, banking, security trading, public education, and radio & television. Within the agriculture sector, rice and barley farming is restricted. In total, 60 types of business are prohibited to foreign investors. Most partially restricted activities also have public interest traits. Foreign shareholdings in these activities are allowed up to 49.99%. Partially restricted business activities include: fishing, newspapers and magazines, beef cattle farming & distribution, internal transportation, telecommunications, electronic network business and power plants (except nuclear power).

2.2 A subsidiary

A subsidiary established by a foreigner is considered to be a native corporation, since it is subject to the Foreign Investment Promotion Act and other commercial laws. Here, the definition of a foreigner is an individual with foreign citizenship, a corporation established under a foreign regulation, or an organisation executing Economic Development

Cooperation tasks for a foreign government. A foreigner must invest more than 100,000,000 KRW in order to establish a domestic corporation.

The majority of companies are chusik hoesa, or stock companies. However, yuhan hoesa, or private companies, may also be suitable for foreigners if the number of shareholders is not expected to exceed 50. Domestic commercial laws apply to investments made through a company.

2.3 An individual entrepreneur

A foreigner investing more than 100,000,000 KRW in the form of an individual entrepreneur, is also acknowledged as a foreign investment, and is subject to the Foreign Investment Promotion Act, just as a subsidiary is. Even though operating a business in the form of an individual entrepreneur has the advantage of a simpler process for the temporary and permanent closure of the business, it is also disadvantaged in obtaining a reliable work force and financing since a foreigner's credit rating is relatively low.

2.4 Branch

In order for a foreign company to carry out general business tasks, it has to nominate a representative in the domestic branch, to follow through with the branch founding process in accordance with the Foreign Exchange Transaction Act, and obtain a registration from the Court. A branch is recognised as a permanent establishment since it operates a business activity that generates revenue within the country, and the revenue generated from operating a business within the country is subject to the same corporate tax applied to common native corporations.

2.5 Liaison office

Unlike a branch, a liaison office is not permitted to perform a business activity. Since it fulfills non-business tasks for the head office, it is only required to obtain a unique business number as a business owner registered from the jurisdiction tax office without the need for a court registration.

The tasks performed by a liaison office are limited to preliminary and auxiliary works such as business-related contact with the head office, market research, research and development activities, quality assurance, advertisement, data collection, etc. Since there is no source of domestic revenue, direct sales or maintaining a stock of products for the purpose of sale are not permitted.

INCENTIVES FOR FOREIGN INVESTMENTS

3.1 Scope

Incentives for foreign investments are:

- Tax support
- Cash grants
- Founding supports and reduction on rent expenses
- Grant subsidies

3.2 Enterprise and technology subject to tax exemption and reduction

An enterprise subject to tax exemption and reduction is:

- In a technology-intensive industry and industrial supporting service industry
- An enterprise which is located in the Foreigner Investment Zones
- An enterprise which is located in the Free Economic Zones
- An enterprise conducting a development operation of the Free Economic Zones
- An enterprise conducting a development operation of the Cheju Investment Promotion Organization
- An enterprise which is located in the Company City Development
- An enterprise conducting a development operation of the Company City Development
- Other enterprises selected by the President

3.3 Tax reduction and exemption

Corporation and income tax reduction and exemption for foreign investment enterprises

- A. Technology-intensive industry, industrial supporting service industry, an enterprise designated to the Foreign Investment Zones: minimum deduction of 100% for 5 years, then 50% for the next 2 years
- B. An enterprise located in a particular special economic zone such as a complex form of foreign investment zone: minimum deduction of 100% for 3 years, then 50% for the next 2 years

- Tax deduction and exemption for dividends to a foreign investor
- Tax acquisition, tax registration and tax property reduction and exemption of a foreign investment enterprise
- Tariff exemption on capital goods used in the industrial supporting service industry, etc.
- Reduction and exemption of local taxes

CORPORATE TAXATION

4.1 Scope

Corporate taxation for foreign investment is as follows:

TYPE	CONTENTS
Corporate Tax Law, Income Tax Law	Non-resident, definition of a foreign corporation Income subjected to taxation Taxation method
The special tax treatment control law	Corporation and income tax reduction and exemption related to domestic source of income Tax reduction and exemption to foreign investment
The Law for the Coordination of International Tax Affairs	Transfer pricing taxation / Insufficient capital tax system / Tax haven taxation system
Tax Convention	Limitation and modification of application of domestic tax regulation

The current tax law is divided into individual income tax related to the Income Tax Law and Corporate Income Tax related to the Corporate Tax Law. An investment in the form of a personal business is subject to the Income Tax Law and that of a domestic corporation or a branch is subject to the Corporate Tax Law.

The Income Tax Law and Corporate Tax Law are both laws related to the overseas dimensions of income tax and the regulation contents are primarily identical, especially, the contents related to the regulation for calculating a tax basis (calculation of taxable income, imputed time for profit and loss, original cost and valuation of assets, rejection of unfair act and calculation, etc.), and regulations related to tax credit, tax return and tax payment, determination, reassessment, and refunds are almost identical.

4.2 Tax residency

In general, taxable income is different according to the type of entity, as shown in the following table:

TYPE OF ENTITY	SCOPE OF TAXABLE INCOME
A resident or a domestic corporation	Worldwide income
Non-resident or non-domestic corporation with domestic establishment (or permanent establishment)	All income related to the domestic establishment
Non-domestic establishment	Only the portion of domestic source income which are listed in tax laws

A corporation which has its head office, a main office, or a physical administration location within the country, is considered to be a domestic corporation. And a corporation with its head office or a main office in a foreign country (on the condition that it does not own a physical administration office within the location) is categorised as a foreign corporation.

4.3 Year of assessment ('ya')

In general, one accounting year of a corporation is decided in accordance with the law or the corporation's articles of incorporation; however, the period cannot exceed one year. In cases where the accounting period is not specified in the law or in the articles of incorporation, the period can be selected with a registration and without registration, the period becomes January 1st to December 31st.

4.4 Tax rate

The tax rate is as follows:

TAX BASIS	TAX RATE From 2012*
Amount below 200,000,000 KRW	11%
Amount exceeding 200,000,000 KRW and below 20,000,000,000 KRW	22%
Amount exceeding 20,000,000,000 KRW	24.2%

(*) Including residence tax (local income tax) equal to 10% of the tax amount

4.5 Taxable income

The range of categorised tax obligations for a corporation is as follows:

TYPE OF CORPORATION		INCOME FOR THE BUSINESS YEAR	CAPITAL GAIN FOR LAND ETC.	LIQUIDATION INCOME
Domestic corporation	Profit Corporation	All income from domestic and foreign source	Subject to tax	Subject to tax
	Non profit Corporation	Income from listed revenue-making business within domestic and foreign sources	Subject to tax	Tax-free
Foreign Corporation	Profit Corporation	Domestic source income	Subject to tax	Tax-free
	Non profit Corporation	Income from listed revenue-making business within domestic source income	Subject to tax	Tax-free
National, local organization		Tax-free		

4.6 Self-assessment system

Corporate taxation is a self-assessment system. A corporation with tax obligations must make the payment by self-assessment to the competent tax office within the three months before its business year end.

4.7 Loss carried forward

Loss Carried Forward is subject to deduction carried forward for ten years. For small and medium businesses, a loss carried forward for a particular year can be retroactively applied to previous year's tax basis.

4.8 Consolidated taxation system

A domestic corporation and other domestic corporations (or "Completely Controlled Subsidiary") completely controlled by the corresponding domestic corporation can apply a consolidated taxation system by obtaining approval from the National Tax Service. In case of two or more Completely Controlled Subsidiaries, all corresponding corporations shall adopt a consolidated taxation system.

"Completely Controlled" means owning 100% of the shares. Within 5% of total issued

shares, the ownership by employees through an employee stock ownership associate is deemed as "Completely Controlled".

4.9 Taxation of foreign corporations

The income of a branch of a foreign company is generally assessed in the same way and subject to the same tax rate as that of a locally incorporated subsidiary. The Controller requires transactions between the branch and head office to be conducted on an arm's length basis.

4.10 Principle of substance over form

Principle of substance over form related to a transaction imputed person: the tax obligation is subject to the substantial imputed person.

Principle of substance related to business contents: follow the appropriate tax law according to substantial contents disregarding its business title or form.

4.11 Withholding taxes

In the case of non-resident recipients, tax may be collected by deduction at source. Each entity is required to withhold tax before paying or crediting certain categories of income to any non-resident recipient. The rates of withholding tax are as follows:

- interest, dividend, royalties, other income: 20%
- business income: 2%
- rent for ship etc.: 2%
- personal service fee: 20%
- real estate and securities capital gain: min {(10% of paid amount), (20% of capital gain)}
- residence tax: 10% of tax amount calculated from the above tax rate is added to the residence tax

The above withholding tax rates may be mitigated where the Republic of Korea has a double tax treaty with the country of the recipient.

The tax withheld must be remitted to the Tax Controller by the 10th day of the month following the month during which the non-resident was paid/credited, failing which penalties are imposed.

PERSONAL TAXATION

5.1 Scope

In principle, one with a tax obligation to pay for an income tax is an individual (resident and non- resident); however, in exceptional cases, a division, a foundation, and other organisations not classified as a corporation and an organisation considered as a resident or an organisation seen as a partnership have tax obligations to pay income taxes. In case of corporations, the withholding tax obligator has an obligation to pay income tax.

5.2 Tax residency

According to the Korean tax law, a resident is an individual with a domestic address who has resided there for more than 183 days; and a non-resident refers to an individual who is not a resident. The income tax law introduces a concept of "impermanent residents" and acknowledges their limited tax obligations.

5.3 Range of taxable income

The range of taxable income varies according to the tax payment obligator is as follows:

CLASSIFICATION		JUDGMENT STANDARD	TAX OBLIGATION
Resident	Permanent Resident	A domestic address or resided for more than 183 days Not a temporary resident	An unlimited tax obligation of domestic and foreign income
	Temporary Resident	A domestic address or resided for more than 183 days A foreign resident with a total of less than 5 years of having a domestic address or residing within the country, which is 10 years before its closing date for taxation period	Domestic source of income In case of income generated from overseas, a limited tax obligation related to income that has been paid within the country or remitted to the country
Non-resident		Not a resident	A limited tax obligation of domestic source income

5.4 Classification of income

The Korean tax law does not consider all income as taxable, and restrictively enumerates taxable income in the form of a positive system. However, exceptionally it uses the concept of a negative system regarding interest income and dividend income.

Classification of income is as follows:

Total Income	Interest Income
	Dividend Income
	Business Income
	Wage and Salary Income
	Annuity Income
	Other Incomes
Retirement Income	
Capital gain	

5.5 Taxation system

(1) Resident

The way for a resident to pay income tax is classified as an aggregate taxation system, a separate taxation system, and a classified taxation system, based on its income type:

- Aggregate taxation system: calculates tax base and tax amount by aggregating all income categorised by its source (Interest income, dividend income, realty rent income, business income, wage and salary income, annuity income, and other incomes)
- Separate taxation system: the closure of tax obligation as a withholding tax (among interest income, dividend income, realty rent income, wage and salary income, annuity income, or other incomes levied in aggregate taxation system, some selected incomes selected by the tax law)
- Classified taxation system: an income formed over a long period of time (retirement income, and capital gain)

(2) A non-resident

A non-resident is only subject to pay income tax on a domestic source of income and determining its applicable taxation system is based on its ownership of a domestic business location and existence of realty rent income:

- Aggregate Taxation System: a non-resident with a domestic business location or realty rent income in such forms as interest, dividend, rent, business, personal service, wage and salary, and other incomes imputed to the domestic business location are subject to pay the tax ac- cording to the aggregate taxation system.
- Separate Taxation System: a non-resident with a domestic business location classifies their interest and dividend income not imputed to the domestic business location as withholding tax. A non-resident without a domestic business location classifies their retirement income and capital gain into their income type to pay as a complete payment of withholding tax.
- Classified Taxation System: for retirement income and capital gain, the process is identical with a resident to be separately categorised in accordance with the classified taxation system.

5.6 Taxation period

In principle, the taxation period for income tax is from January 1st to December 31st of each year.

If a resident is becoming a non-resident by moving their address or residence out of the country, the taxation period is from January 1st to the departure date.

5.7 Tax rates

Aggregate income tax rate is as follows:

AGGREGATE INCOME TAXATION STANDARD	TAX RATE (from 2014*)
Below 12,000,000 KRW	6.6%
12,000,000 KRW ~ Below 46,000,000 KRW	16.5%
46,000,000 KRW ~ Below 88,000,000 KRW	26.4%
88,000,000 KRW ~ Below 150,000,000 KRW	38.5%
150,000,000 KRW and above	41.8%

(*) Including residence tax (local income tax) equal to 10% of the tax amount

5.8 Witholding taxes for non-resident

In the case of non-resident recipients, tax may be collected by deduction at source. Each entity is required to withhold tax before paying or crediting certain categories of income to any non-resident recipient. The rates of withholding tax are as follows:

- interest, dividend, royalties, other income: 20%
- business income: 2%
- rent for ship etc.: 2%
- personal service fee: 20%
- real estate and securities capital gain: min {(10% of paid amounts), (20% of capital gain)}
- Residence Tax: 10% of tax amount calculated from the above tax rate is added to the residence tax

The above withholding tax rates may be mitigated where the Republic of Korea has a double tax treaty with the country of the recipient.

The tax withheld must be remitted to the Tax Authorities by the 10th day of the month following the month during which the non-resident was paid/credited, failing which penalties are imposed.

VALUE ADDED TAX (VAT)

6.1 Object of taxation

Divided into provision of goods or services, and transaction act of importing:

CLASSIFICATION	OBJECT OF TAXATION
Provision of goods	Taxable only if the provider is a business owner
Provision of services	Taxable only if the provider is a business owner
Importing of goods	Taxable without considering whether the purchaser is a business owner

6.2 Tax rate

VAT rate is 10%. The amount of tax payment is calculated by deducting input tax from output tax. When input tax exceeds output tax, the exceeded amount is refunded.

6.3 Zero tax rate and exemption

Apply zero tax rates for exporting goods, providing foreign services, shipbuilding, flight service for foreign destinations, or other goods providing foreign currencies.

VAT exemption for the following goods and services provisions:

- Basic living necessities such as food and services
- National welfare services such as medical and education
- Goods and services related to culture such as books, culture, sports
- Services producing value-added possibilities such as finance, insurance services
- Goods and services provided by public organisations such as other religious societies, chari- ties, etc.
- Land

6.4 Importing of service and payment by proxy system

The importing of service is not regulated as a taxable transaction; however, when a tax-free business owner receives service from a non-resident without a domestic business location, one without a domestic business location but its income is subject to withholding tax by separate taxation system or a non-resident without imputed domestic business location, it should levy VAT upon payment for the service and pay the amount to the district tax office.

6.5 VAT refund to foreign business owners

A non-resident without a domestic location or a foreign business owner doing business overseas as a form of a foreign corporation is subject to a refund for VAT for the foreign business owner if it purchases or is provided with the following goods and services in the country for the purpose of doing business. In this case, the refund amount for the foreign business owner's one year calendar must exceed 300,000 KRW.

A refund follows reciprocity, an equal treatment of granting refunds to countries permitting refunds to Korean businesses in their countries.

- Food, lodging services
- Advertising service
- Electricity, communication service
- Realty rent service
- Goods and services required to operate and maintain a domestic business location of a foreign business owner
- Building, structure, and maintenance service of the building and structure for a domestic business location
- Office furniture, equipment, and rent service of the office furniture and equipment

OTHER TAX

There are following additional taxes which are relevant to individual and corporation:

- Inherence, gift tax
- Tariffs
- Acquisition tax, registration tax
- Residence tax
- Comprehensive real estate holding tax
- Special tax for rural development
- Individual consumption tax
- Transportation, energy, environment tax
- Liquor tax
- Stamp tax
- Security transaction tax
- Education tax

DOUBLE TAX TREATIES

The Republic of Korea has an extensive network of double taxation agreements with other countries.

SOCIAL SECURITY

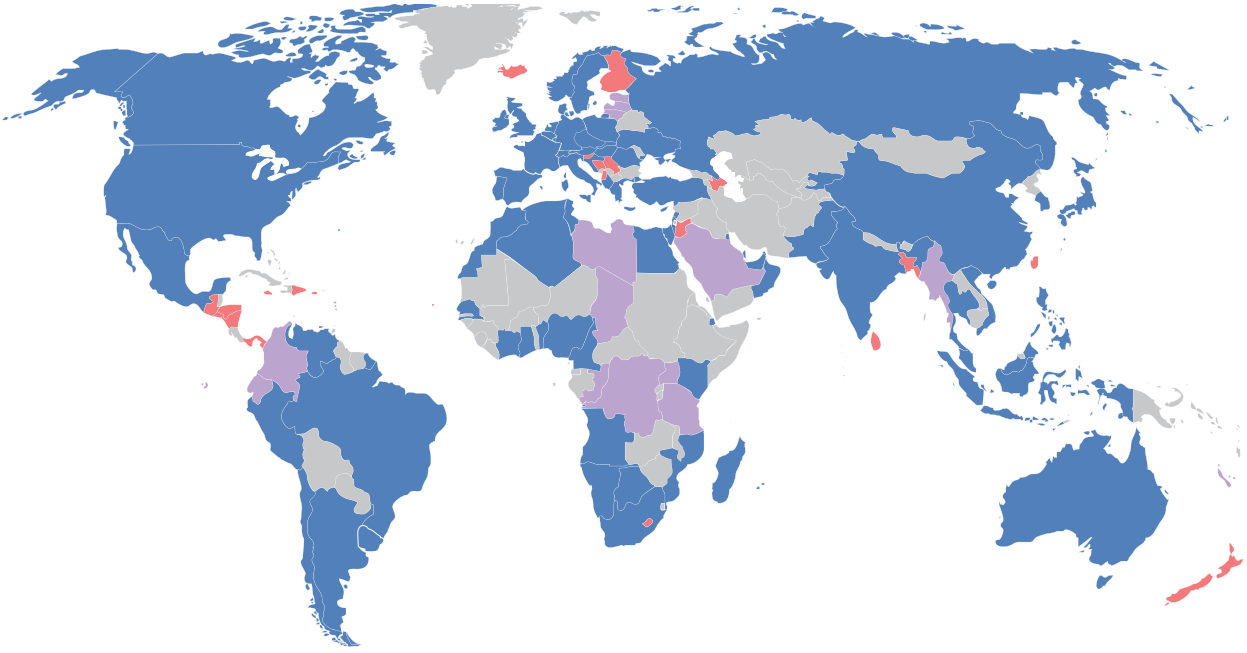
Generally, the following four social securities are relevant to do business in the Republic of Korea:

- National pension
- Health insurance
- Unemployment insurance
- Workers accident compensation insurance

ACCOUNTING & AUDIT

External audits, by a registered KICPA, are mandatory for (i) stock-listed corporations and corporations planning to be listed, (ii) corporations with over KRW 12 billion of assets, (iii) corporations with over KRW 7 billion of assets and over KRW 7 billion of liabilities, (iv) corporations with over KRW 7 billion of assets and more than 300 employees.

MAZARS' WORLDWIDE PRESENCE



Integrated countries

Non-integrated countries: Mazars correspondents, country local correspondents, joint ventures and representative offices

Countries covered via the Praxity Alliance

Mazars is present in 5 continents.

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