

**DOING BUSINESS**

IN KOREA

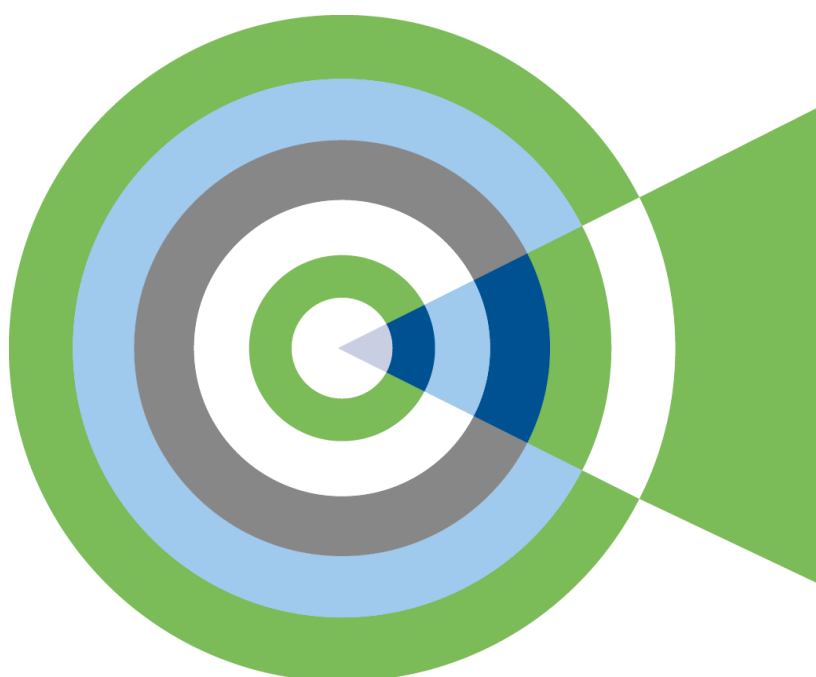


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# 1 – INTRODUCTION

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UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 90 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Korea has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at September 2015.

We look forward to helping you do business in Korea.

## 2 – BUSINESS ENVIRONMENT

Korea's gross domestic product (GDP) in 2014 increased to USD 1,410 billion from USD 1,305.4 billion in 2013 mainly due to a steady rise in private consumption and exports.

This growth was greatly helped by the government's various stimulus measures and efforts to strengthen competitiveness, which were driven by the private sector as well. Evidence suggests there should be an optimistic view about the Korean economy for future years, especially following the announcement of the Bank of Korea (BOK) that real GDP grew 3.3% in 2014 compared with previous year, the economy edging up 2.0%. And to the surprise of many, Korea became the 15th largest economy in the world at the end of 2014, with a per capital income of USD 23,837. (At USD 17,348.1 billion, the United States recorded the world's largest GDP in 2014, followed by China at USD 10,389.4 billion and Japan at USD 5,007.2 billion.)

Korea's yearly economic growth rate in 2014 was 3.3% ; this compared with the following growth rates for developed countries of the United States 2.4%, China 7.4%, Japan (0.1)%, Britain 3% and Germany 1.6%.

### BALANCE OF PAYMENT

Korea had a current account surplus of USD 89.2 billion in 2014. The details of the current account surplus by sectors are as shown in Table 1 below. The goods account recorded a surplus of USD 92.7 billion in 2014, an increase of USD 32 billion compared with USD 60.7 billion in 2013. The service account surplus was fallen from USD 6 billion in 2013 to USD (8.0) billion in 2014.

**TABLE 1**

*Balance of payment by year – USD billion, Source: Bank of Korea*

	2010	2011	2012	2013	2014
<b>Current account</b>	29.4	26	48	70.7	89.2
Goods account	40.1	31.7	39.8	60.7	92.7
Services account	-8.6	-5.8	5.7	6	-8
Primary income account	1	2.9	5.7	4.8	10
Secondary income account	-3.1	-2.6	-3.2	-0.8	-5.5
<b>Capital and financial account</b>	-27.5	-26.8	-50.8	-72.8	-90.4

### EMPLOYMENT

Following the damaging aftermath of the currency crisis in 1997, when corporate bankruptcies and restructuring resulted in the skyrocketing of the unemployment rate to 7%, the Korean labour market has since stabilised with the rate staying at around 3.38% over the last four years.

TABLE 2

*Unemployment, Source: Bank of Korea*

	2010	2011	2012	2013	2014
Employed (Million)	23.83	24.24	24.68	25.07	25.6
Unemployed (Million)	0.92	0.86	0.82	0.8	0.94
Unemployment rate (%)	3.7	3.4	3.2	3.1	3.5

Significant reforms to improve the flexibility of the employment market have also contributed to employment stability. Part-time and contract employment positions have increased, while permanent/ full-time employment positions have decreased, weakening the strength of labour unions but increasing labour flexibility. As corporate earnings recover, the employment market is gradually recovering and regaining its vitality.

In response to the rapidly changing economic environment and labour market conditions, since July 2004 the government has put into effect the 40-hour working week to reduce the legal number of work hours. This move aims to create new jobs, raise labour productivity and increase general standards of living.

#### INFLATION

The consumer price index has risen by a yearly average of 2.4% over the past five years (2010–2014), while it recorded 4% in 2011, a comparatively high rate against those of other major world economies.

TABLE 3

*Price trends, Source: Bank of Korea*

2010	2011	2012	2013	2014
3.0	4.0	2.2	1.3	1.3

TABLE 4

*2014 Consumer price indices of six economies, Source: Bank of Korea*

USA	UK	GERMANY	EUROZONE	TAIWAN	JAPAN
1.6	1.5	0.9	0.4	0.9	2.8

The high rate could be attributed to the continued price increases of international raw materials, including crude oil, which caused recent price instability and cost-increase type inflation.

To cope with this situation, the government and the Bank of Korea have been making great efforts to control possible inflation by exercising flexible monetary policies.

## 3 – FOREIGN INVESTMENT

### FOREIGN DIRECT INVESTMENT (FDI)

#### ACQUISITION OF STOCKS OR EQUITY OF DOMESTIC COMPANIES (ARTICLE 2.2 OF THE FOREIGN INVESTMENT PROMOTION ACT, FIPA)

For the acquisition by foreign nationals of shares or equity in 1) a Korean corporation or 2) a company run by a Korean national for the purpose of establishing lasting economic relations by participating in the management of such a corporation or company, the following shall apply:

The amount of foreign direct investment on stocks shall be at least KRW 100 million or more, whilst at least one of the following conditions has to be satisfied. If two or more foreign nationals make a joint investment, each has to make an investment of at least KRW 100 million

- Where foreign nationals own 10% or more of the total voting stocks issued by 1) or 2) above; or 10% of the total amount of capital contribution of 1) or 2) above
- Where foreign nationals own less than 10% of the total voting stocks issued by 1) or 2) above; or less than 10% of the total amount of capital contribution of 1) or 2) above, and where they enter into the following agreements :
  - a) Agreements concerning officer's dispatch or appointment; 'officers' refer to those who are entitled to take part in important managerial decision-making processes as director, representative, partner with unlimited liability, auditor or equivalent
  - b) Agreements concerning the supply and purchase of products/raw materials for more than one year
  - c) Agreements concerning the provision or introduction of technology or joint research/ development projects.

#### LONG-TERM LOANS (FIPA, ARTICLE 2.4)

These are loans where loans with maturity of five years or longer are granted to foreign-invested companies (FDI companies) by their overseas parent companies or by companies which have a capital affiliation with the parent companies (Article 2.3 of the FIPA Enforcement Decree).

Companies which have a capital affiliation with the parent companies means:

- Companies which own 50% or more of the total issued stocks or of the total amount of capital contribution of the overseas parent companies
- Companies which fall under the following categories, provided that the overseas parent companies of the FDI companies own 50% or more of the total issued stocks or of the total amount of capital contribution of the said FDI companies
  - Companies which own 10% or more of the total issued stocks or of the total amount of the capital contribution of the overseas parent companies
  - Companies of which 50% or more of the total issued stocks or of the total amount of capital contribution are owned by the overseas parent companies or companies with more than 50% of the total shares or of the total amount of capital contribution of the overseas parent companies.

## FOREIGN INVESTORS AND THE OBJECT OF INVESTMENT

Foreign Nationals (FIPA, Article 2.1.1) are defined as:

- Individuals possessing foreign nationality
- Foreign companies established under the laws of foreign countries
- Organisations for international economic cooperation:
  - Agencies engaging in international economic cooperation for the governments of foreign countries
  - Organisations or agencies which provide development financing services, such as the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the Asian Development Bank (ADB), etc.

Foreign Investors (Article 2.1.5 of FIPA) are:

- Foreign nationals who own stocks or equity pursuant to FIPA.

## FDI COMPANIES (ARTICLE 2.1.6 OF FIPA)

These are companies in which foreign investors have invested capital.

Operators of Facilities for the Promotion of the Foreign Investment Environment (Article 2.1.6.2 of FIPA) are as follows:

- Operators of facilities providing schools or medical facilities for foreigners designed to improve the foreign investment environment include:
  - Foreign schools (Article 60.2 of Elementary Education Law)
  - General hospitals, hospitals, dental hospitals, oriental medical hospitals, nursing-homes, clinics, dental clinics, oriental medical clinics and maternity hospitals (Article 3.2 of Medical Law)
  - Pharmacies (Article 2.3 of Pharmacist Law)
  - Housing (Article 2.1 of Housing Law)
  - Other facilities, including business incubators, which are reviewed by the Foreign Investment Committee and notified by the Minister of Commerce, Industry and Energy.

Objects of Investment (Articles 2.1.7 and 2.1.8 of FIPA) are means of investment contributed to by foreign nationals for the purpose of acquiring stocks, as follows:

- International means of payment under the Foreign Exchange Transactions Act, or domestic means of payment arising from the exchange thereof (ie foreign currency)
- Capital goods:
  - Machinery, equipment, facilities, apparatus, components and parts treated as industrial facilities including ships, motor vehicles, airplanes, etc.
  - Livestock, seeds, plants, trees, fish and shellfish necessary for the development of agriculture, forestry and fisheries
  - Raw materials and spare parts for the test operation of facilities deemed necessary by the competent ministers
  - Freight and insurance premium costs for the transportation of such materials
  - Technology utilised in the installation of related facilities
  - Services engaging in consultation with respect to the import of such materials
- Income generated from stocks or equity acquired pursuant to FIPA (dividends)
- Industrial property/intellectual property rights and other equivalent rights dealing with technology and the use thereof:

- Intellectual property rights – rights utilised for industrial activities among the copyrights under the Copyright Act and layout design rights in Article 2.5 of the Layout Designs of the Semiconductor Integrated Circuit Act
- Remaining assets generated from the liquidation of a foreign company's branch or liaison office located in Korea
- Repayment of long-term loans with maturity of five years or longer, pursuant to FIPA, to FDI companies by their overseas parent companies and to companies affiliated with the respective overseas parent companies
- Stocks of a foreign company listed on a foreign stock exchange market
- Stocks owned by foreign nationals pursuant to the Foreign Exchange Transactions Act
- Real estate in Korea owned by foreign nationals
- Other domestic means of payment – sales proceeds from the disposition of real estate or from stocks of a Korean company owned by foreign nationals pursuant to FIPA and the Foreign Exchange Transactions Act.

#### FDI AMOUNT AND RATIO

- The amount of FDI shall be at least KRW 100 million for each case. In the case of stock acquisition, the total cost shall be at least KRW 100 million. Also, if there are two or more foreign investors, the minimum investment amount shall be KRW100 million for each investor (Article 2.2 of the Enforcement Decree)
- In principle, the FDI ratio shall be 10% or more, meaning that foreign investors shall acquire 10% or more of the stocks of a company. However, where foreign investors have entered into the following contractual agreements, an FDI ratio of less than 10% is allowed (Article 2.2.2 of the Enforcement Decree):
  - Agreements concerning the dispatch or appointment of officers (director, representative director, partner with unlimited liability, auditor, or equivalent who are entitled to participate in critical decision-making processes)
  - Agreements concerning the supply and purchase of products/raw materials for more than one year
  - Agreements concerning the introduction or provision of technology, and joint research and development projects.



## 4 – SETTING UP A BUSINESS

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Foreigners may establish a domestic business presence in four ways.

This can be done through the establishment of a local corporation or a sole proprietorship, for which the Foreign Investment Promotion Act (FIPA) is applicable, or through the establishment of a branch or liaison office as laid out under the procedures in the Foreign Exchange Transactions Act (FETA). A foreign corporation may not, however, be registered as a domestic sole proprietorship.

### LOCAL CORPORATION

The provisions of the FIPA and Commercial Law are applicable to foreign investment through the establishment of a local corporation by a foreigner or a foreign company. A local corporation is treated the same as a domestic corporation. Establishment of a local corporation requires a foreigner to invest KRW 100 million or more, whereas this minimum capital requirement is not applicable in the case of a branch or a liaison office.

### SOLE PROPRIETORSHIP

Investment in the form of sole proprietorship is classified as direct foreign investment if the amount of the investment is KRW 50 million or more. The sole proprietorship is not a legal entity apart from its owner i.e. the proprietor is subject to unlimited personal liability for claims against the business. The proprietor himself is subject to taxation. This form of business organisation is commonly used for small enterprises and operations.

### BRANCH

The conduct by a foreign company of ordinary business activities in Korea requires the appointment of a representative of a domestic branch, undertaking procedures to establish a branch under the FETA and registration with the court. In addition, a branch is classified as a permanent establishment of business under tax law. For the income generated from the domestic business, the same corporate income tax rate is applicable as for domestic corporations.

### LIAISON OFFICE

A liaison office is allowed to perform non-business activities only (while a branch may conduct business activities). Accordingly, a liaison office requires a serial number issued by the competent tax office similar to that in business registration, but no registration with the court.

## 5 – LABOUR

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### LABOUR LAWS

Labour laws serve to provide protection for workers, thereby enhancing the stability of the economy.

There are several categories of labour laws in Korea: the individual labour relations laws, the collective industrial relations laws, the cooperative industrial relations laws and the employment laws.

#### INDIVIDUAL LABOUR RELATIONS LAWS

The individual labour relations laws define the relationship between individual employees and their employers. In other words, they provide legal criteria pertaining to a contract of employment between an employer and his/her employee, the contents of the employment relationship and the procedural relationship, thus protecting working conditions for individual employees.

This category of labour law includes: the Labour Standards Act, Act concerning Protection, etc. of Fixed-term and Part-time Workers, Act Relating to Protection, etc. of Dispatched Workers, the Minimum Wage Act, the Industrial Accident Compensation Insurance Act, the Equal Employment Act and the Employee Retirement Pay Guarantee Act.

#### COLLECTIVE INDUSTRIAL RELATIONS LAWS

The collective industrial relations laws govern labour relations between worker organisations, such as trade unions and employee representatives, and employers. These laws are intended to establish an autonomous problem-solving practice (labour-management autonomy), by guaranteeing the right to organise for workers who are underprivileged in social and economic terms compared to their employers, so that the former may be on an equal footing with the latter.

This category of labour law includes: the Trade Union and Labour Relations Adjustment Act, the Labour Relations Commission Act, the Act concerning Establishment and Operation of Teachers' Unions and the Act concerning Establishment and Operation Public Servants' Unions.

#### COOPERATIVE INDUSTRIAL RELATIONS LAWS

The cooperative industrial relations laws are aimed at realising sustained development for enterprises, industrial peace and a continuous growth in the national economy, by promoting cooperation and participation of employers and employees and pursuing their co-prosperity.

This category of labour law includes the Act concerning Promotion of Worker Participation and Cooperation, which was enacted on 13 March 1997 to promote cooperation in labour relations.

## EMPLOYMENT-RELATED LAWS

This category of labour law includes the Basic Employment Policy Act, the Vocational Security Act, the Act Relating to Protection, etc. for Dispatched Workers, the Employment Insurance Act, the Act on Employment Promotion and Vocational Rehabilitation for Disable, the Aged Employment Promotion Act, the Workers' Vocational Ability Development Act and the Act concerning Employment, etc of Foreign Workers.

These laws are intended to contribute to a stable life for workers and to further development of the national economy, by balancing the supply and demand in the labour market and promoting employment security.

## RETIREMENT

Each worker should choose either retirement pay or retirement pension, in order to receive retirement benefit.

### RETIREMENT PAY

When an employee has worked for one year or longer consecutively for an employer, the employer shall give the employee retirement pay equivalent to at least 30 days' average wage per each year worked.

### RETIREMENT PENSION

There are two different models of retirement pension – defined benefit (DB) and defined contribution (DC), and each and every workplace should adopt one of the two.

## SOCIAL INSURANCE

Insurance comprises four main types:

- 1) National pension (against invalidity, death and old-age)
- 2) Health insurance (against non-occupational illness and injury)
- 3) Industrial accident compensation insurance (against occupational disease and injury)
- 4) Employment Insurance (against joblessness).

Employers are obligated to provide national pension, health insurance, industrial accident compensation insurance and employment insurance. The premiums assumed by the employers in proportion to the cost of labour are as shown in Table 5 below:

TABLE 5

*Insurance premiums*

	TOTAL	EMPLOYEES	EMPLOYERS
National pension	9%	4.50%	4.50%
Health insurance	6.07%	3.04%	3.04%
Long-term care insurance (proportion to health insurance)	6.55%	3.28%	3.28%
Industrial accident compensation insurance	0.6%–3.4%	None	0.6%–3.4%
Employment insurance	0.25–1.3%	0.65%	0.25–0.85%

## 6 – TAXATION

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The taxation of commercial activity in Korea depends on the particular form of business organisation.

The main aspect to be considered in this context is that the income and net worth of unincorporated companies are taxed at the level of the individual partner, while a corporation represents an independently taxable entity.

For further information, go to:

The English web page of the National Tax Service (NTS) <http://www.nts.go.kr/eng>

The foreign taxpayer Help-line (English) +82 2 397 1440

### UNINCORPORATED COMPANIES AND INDIVIDUALS

#### TAXPAYER

Taxpayers, who are liable to pay income tax on their income, are classified into 'Resident' and 'Non-resident', according to whether the country has the taxing right on their worldwide or domestic income only, and the scope of income deduction pursuant to the provisions of the Income Tax Act of Korea.

#### RESIDENT

Principally, a resident is any individual who has his/her domicile in Korea or a place of residence for one year or more in Korea. The domicile shall be judged by the objective facts of the living arrangements, such as the existence of a family in Korea and of property located in Korea. The 'place of residence' means the place where a person has dwelt for a long time not just his/her given address.

A taxpayer who falls into the following categories is deemed to have a domicile in Korea:

- Those whose occupation will require him/her to live in Korea for one year or more
- Those who have family in Korea and who are likely to reside in Korea for one year or more in view of his/her occupation or assets held in Korea.

A resident is subject to income tax on all incomes derived from sources both within and outside the country.

#### NON-RESIDENT

Any individual other than a resident is a non-resident, who is liable to income tax only on the income derived from sources within Korea.

#### TAXABLE INCOME

As stated above, resident individuals are taxed on their worldwide income. Non-resident individuals are taxed only on Korean-sourced income.

Regarding the taxation method, income derived by residents and non-residents is subject to global and schedular taxation. Under global taxation, interest, dividends, real estate rental income, business income, wages and salaries, pension income, and other income are aggregated and taxed progressively. However, capital gains and retirement income are taxed separately under different taxation at varying tax rates.

### GLOBAL INCOME

Taxable global income comprises the entire annual income from the following sources:

- Interest, dividends (including deemed dividends), real estate rental income
- Business income, wages and salary income
- Pension income and other income.

### NON-GLOBAL INCOME (CLASSIFIED INCOME)

Non-global income denotes the income which is separately taxed from the global income at varying rates. It includes retirement income and capital gains.

TABLE 6

*Tax rates (applicable for income occurring after 1 January 2014)*

TAX BASE OF GLOBAL INCOME (KRW)	TAX RATES
Less than 12 million	6%
12–46 million, or less	KRW 0.72 million + 15% of the amount exceeding 12 million
46–88 million, or less	KRW 5.82 million + 24% of the amount exceeding 46 million
88–150 million, or less	KRW 15.9 million + 35% of the amount exceeding 88 million
Over 150 million	KRW 90.1 million + 38% of the amount exceeding 150 million

The additional local tax (inhabitant surtax) is 10% of the income tax.

### EXEMPTIONS AND CREDITS

#### TAX EXEMPTIONS

A foreigner may choose separate taxation of their total income from employment by multiplying such income by 17/100 instead of the Tax rate of the Individual Income Tax, Art.55-1. In this case, provisions concerning such tax exemption, deduction, reduction, and tax credit shall not be applicable. (See the Restriction of Special Taxation Act/RSTA, Art. 18-2.)

In cases where wages are received by a person working for a foreign government or an international organisation (such as the United Nations and its affiliated organisations) as prescribed by §14 of the Enforcement Decree of the Income Tax Act, the principle of reciprocity is applied for foreign governments.

Exemptions also apply to wages derived from the provision of services to a national within Korea, if such employment income was earned up until the month where five years have passed since the first date on which the foreign engineer provided their services in Korea. (See the RSTA, Art. 18)

In addition, exemptions apply to wages derived by providing services to a national within Korea under a contract for the introduction of technologies referred to in the Foreign Investment Promotion Act. In these cases, the exemption amount shall be limited to the income earned until the month where five years have passed since the date of delivery of the certificate of report on a contract for the introduction of such technologies. (See the RSTA, Art. 18)

### TAX CREDITS

A Class B income earner may either join a Taxpayers' Association to pay monthly taxes, thereby enjoying a 10% tax credit, or may wait and file an annual tax return by the end of May of the following year with no benefit of any credit. If a branch in Korea of a foreign corporation claims as a deductible expense an expatriate's salary paid outside Korea, the salary is deemed to be class A income and the branch must withhold income tax on the monthly salary.

### CORPORATIONS

Companies subject to corporation tax in Korea can be classified into two types of category: domestic or foreign and for profit or not-for-profit.

For tax purposes, a company with its head or main office in Korea is deemed to be a domestic company and is liable to tax on its worldwide income. Otherwise, it is considered to be a foreign company, and the tax liability of foreign companies is limited to Korean-sourced income.

### DOMESTIC CORPORATION

These are taxpayers as follows:

- A corporation with its head or main office in Korea is liable to corporation tax on its worldwide income
- A for-profit domestic corporation is liable to tax on the following items of income:
  - All items of ordinary business income including income from sales of real estate property
  - Liquidation income – income realised upon the liquidation of a business due to a corporate merger, a consolidation, or a cessation of the company as a taxable entity
- For a not-for-profit domestic corporation, the following items of income are taxable:
  - Income from any profit-making business under the Korean Standard Industrial Classification
  - Interest income and discounts from deposits and debentures (including public bonds)
  - Dividends and distribution of profit companies
  - Capital gains from the alienation of stocks, pre-emptive rights, or shares
  - Capital gains from the alienation of fixed assets not used directly for not-for-profit corporations
  - Gains from the transfer of bonds and debentures.

## FOREIGN CORPORATION

When a corporation with its head or main office located in a foreign country earns income from domestic sources, only the income from a domestic source is subject to corporation tax; income from the liquidation of a foreign corporation is not taxable.

For not-for-profit foreign corporations, no corporation tax is assessed on income other than that from profit-making businesses in Korea.

## RULES AND SPECIAL CASES DETERMINING LIABILITY

When a corporation to which the corporation income is legally attributed is different from the corporation to which the income actually belongs, the corporation tax shall be assessed on the corporation to which the income actually belongs.

For income attributable to a trust estate, the beneficiary of the trust is subject to corporation tax.

## TAXABLE AND NON-TAXABLE INCOME

### TAXABLE INCOME

Corporation tax is assessed on the following income:

- Income during each business year
- Liquidation income (not-for-profit domestic and foreign corporations are exempted).

### NON-TAXABLE INCOME

Corporation tax is not levied on income derived from the property of public welfare trusts: it does not matter whether the application for non-taxation is submitted or not.

### TAX BASE

The income of a domestic corporation during each business year is the amount remaining after deducting the gross amount of losses from the gross amount of gains in the same business year.

## TAX RATES AND CREDITS

### TAX RATES

TABLE 7

*Tax rates (applicable for the fiscal period beginning 1 January 2012)*

TAX BASE (KRW)	TAX RATES
Less than 200 million	10%
200 million–20 billion	KRW 20 million + 20% of the tax base over 200 million
Over 20 billion	22%

The additional local tax is 10% of the corporation tax.

### TAX CREDITS - CREDITS FOR TAX ABROAD

Where a domestic corporation has paid or is liable to pay foreign corporation tax abroad, this is deducted from the corporation tax up to an amount equivalent to the ratio of the income from foreign sources to the total taxable income. If the foreign tax amount paid or payable exceeds the prescribed creditable limit against the corporation tax payable for the year, the excess portion may be carried over for five years.

### TAX CREDIT FOR LOSS CAUSED BY DISASTER

Where a domestic corporation is deemed to have difficulties in paying tax because it has lost 30% or more of the total value of its assets due to a natural disaster, a tax amount equivalent to the ratio of the value assets loss to the value of total assets is deducted from the corporation tax. The amount of tax credit available is limited to the value of the asset loss caused by disaster.

### REDUCTION OR EXEMPTION

The corporation tax may be reduced or exempted for the following businesses:

- An industry-supporting service which is vital to the strengthening of international competitiveness of domestic industries, and a business accompanying high-level technology. (See RSTA, Art. 121-2.)
- A business carried on by a foreign-invested enterprise which moves into a foreign investment zone. (See RSTA, Art. 121-2.)

### VALUE ADDED TAX (VAT)

#### TAXPAYERS

Those liable for VAT are:

- A person engaging in the supply of goods or services independently in the course of business, whether or not for profit
- Taxpayers include individuals, corporations, national and local governments, associations of local authorities, any bodies or persons, and unincorporated foundations of other organisations are generally subject.

#### TAXABLE PERIOD

The taxable period for VAT is divided into two.

- 1) First period – 1 January to 30 June
- 2) Second period – 1 July to 31 December

VAT reports should be filed to a tax office on a quarterly basis.

#### TAXABLE TRANSACTIONS

Value added tax is imposed on the following transactions:

- The supply of goods and services
- The importation of goods.



## ZERO-RATING AND EXEMPTIONS

### ZERO-RATING

The supply of the goods and services described below is zero-rated and the input tax incurred is refundable. Zero rating is applicable only to traders who are residents or domestic corporations. However, in the case of international transportation service by ships or aircraft, traders who are non-residents or foreign corporations are subject to zero-rating on a reciprocity basis.

Zero-rating applies to:

- Goods for exportation
- Services rendered outside Korea
- International transportation service by ships and aircraft
- Other goods or services supplied for foreign exchange earnings.

### EXEMPTION

The supply of the following representative goods and services is subject to VAT exemption and the input tax incurred thereon is not refundable (though traders may elect not to be exempted):

- Basic life necessities and services
- Social welfare services
- Goods or services related to culture, personal services such as writing and composition
- Medical care services
- Land, financial and insurance services
- Other goods or services and duty-exempt goods.

## TAX BASE AND ASSESSMENT

### TAX BASE

The tax base of VAT for the supply of goods or services is an aggregate amount of the value as specified below:

- If the supply is for a money consideration, its consideration
- If the supply is for a non-monetary consideration, its open market value
- If the actual consideration is considered to be unduly less than that which might reasonably be expected or if there is no consideration, its open market value
- In the case of the inventory goods at the time of the closing down of a business, the open market value of the inventory goods

However VAT is not to be included in the base.

### TAX RATE

The rate of value added tax is 10%.

### AMOUNT PAYABLE

The amount of VAT is computed by deducting the input tax amount from the output tax amount chargeable on the goods and services supplied by the tax payer. Input tax which exceeds output tax is refundable.

## THE LAW FOR THE COORDINATION OF INTERNATIONAL TAX AFFAIRS – TRANSFER PRICING REGIME

### ADJUSTMENT OF A TRANSFER PRICE BASED ON AN ARM'S LENGTH PRICE

The LCITA (Law for the Coordination of International Tax Affairs) authorises the tax authorities to adjust the transfer price based on an arm's length price (ALP) and to determine or recalculate a resident's taxable income when the transfer price of a Korean company and its foreign counterpart is either below or above an arm's length price.

### CRITERIA AND PROCEDURE FOR TRANSFER PRICE ADJUSTMENT

The LCITA and its Decree define an arm's length price (ALP) as a price which is established or which can be expected to be established in a normal transaction between independent enterprises without a 'special relationship'.

The LCITA lists the following methods for determining an ALP:

- The comparable uncontrolled price (CUP) method
- The resale price method
- The cost-plus method.
- Furthermore, the Decree elaborates upon:
  - The profit-split method
  - The transactional net margin method (TNMM)
  - The Berry Ratio method as methods for determining an ALP based on profits arising from controlled transactions.

The CUP method – this evaluates an ALP by comparing the price which an independent uncontrolled person under the same or similar circumstances in terms of trade conditions or volume would set for goods identical to those in question.

The resale price method – this may be applied where a manufacturer sells their products to a related person and the related person resells the same product to an unrelated third party without any further processing. Under this method, the adjustment in the transfer price between related parties may be computed by subtracting an appropriate mark-up amount from the price which the related reseller charges for the product to unrelated third parties.

The cost plus method – in principle, this may be applied where a manufacturer sells his or her products to the related party and the related party then adds value to the product by processing it further to sell to unrelated third parties. In such cases, the ALP is calculated as the price of the refined goods less the actual costs of further processing, together with an appropriate mark-up upon such costs.

The profit split method – this determines an ALP by taking the sum of profits earned by the related parties and allocating them in proportion to the respective contribution towards the profits realised.

The TNMM – this evaluates an ALP by first seeking an independent third company which is similar to the company at issue in terms of its business operations and the nature of its business, and then by subjecting such a company to functional and comparability analyses. The income earned by the third company is then estimated based upon the following ratios: profits to assets, operating profits to turnovers and profits to equity. These estimates will then be used to evaluate and if necessary, adjust the income and profit of the related parties.

The Berry Ratio method – with this method, an ALP in a transaction between a Korean company and its foreign-related party is established by using the ratio of gross profit to operating expense (GP/OE) in a comparable (the same or similar) transaction between the Korean company and an unrelated party.

#### SELECTION OF METHOD FOR DETERMINING ALP

The Decree states that an ALP should be determined by the most reasonable method applicable to the situation, whether this is the CUP method, the resale price method, the cost plus method, or any other method.

#### REPORTING METHODS FOR AN ALP DETERMINATION

The method used and the reason for adopting that particular ALP determination must be disclosed to the tax authorities by a taxpayer in a report submitted along with the annual tax return.

#### ADVANCE PRICING ARRANGEMENT (APA) SYSTEM

If a taxpayer wishes to obtain an APA for transactions with its foreign-related parties, then he/she should submit an application for an APA to the National Tax Service (NTS) by the end of the first fiscal year concerned (Unilateral APA).

#### SECONDARY ADJUSTMENT

If the tax authorities adjust the transfer price between a Korean company and its foreign-related party based upon an ALP or they increase the taxable income of the Korean company, and if the foreign party has not returned an amount equal to the additional taxable income to the Korean company, the tax authorities will give the foreign-related party the 90-day period during which it may return to the Korean company the amount plus interest accrued up to the point of the return. If the foreign-related party fails to do so within the period, the amount equivalent to the additional taxable income will be mostly treated as dividends, even if the foreign party is a related company of the Korean company other than a shareholder thereof.

#### CORRESPONDING ADJUSTMENT

The LCITA and its Enforcement Decree state that if a foreign government, on the basis of an ALP, increases the taxable income of a foreign company which is an associated enterprise to its Korean counterpart, the Korean government will correspondingly reduce the taxable income of that Korean company if the two governments have agreed upon an ALP applicable to the case through a Mutual Agreement Procedure (MAP). In such a case, a taxpayer may apply for a downward adjustment in his taxable income by filing a notification of the MAP results with the tax authorities.

### ADJUSTMENT WITH REGARD TO A COST SHARING AGREEMENT (CSA)

International standards used to verify appropriateness of cost sharing between a resident and its foreign-related party have been reflected in the domestic tax law.

Under the new provision, in cases where a resident agrees to develop intangible property jointly with a foreign-related party and to share costs/expenses incurred in relation to such a development with the foreign-related party, the tax base of the resident may be adjusted based on ALP. (The shared costs based on the ALP are tax deductible).

### THIN CAPITALISATION RULES

#### OUTLINE OF THIN CAPITALISATION RULE

A multinational enterprise (MNE) may adopt a tax avoidance mechanism under which the contribution of paid-in capital to its subsidiary in Korea is decreased, while increasing its loans to the subsidiary as much as possible. This may result in the minimisation of the taxable income of the subsidiary through the increase in the interest expense deduction of the subsidiary. Under such an arrangement, non-deductible dividend payments are replaced with deductible interest payments.

To cope with such an arrangement, the LCITA and its enforcement decree contain thin capitalisation rules, whereby if a Korean company borrows from its controlling shareholders overseas (CSO) an amount greater than three times its equity (six times in the case of financial institutions), interest payable on the excess portion of the borrowing, computed as shown below, is re-characterised as dividends to which the article on dividends in tax treaty applies and is therefore treated as non-deductible in computing taxable income.

For purposes of the thin capitalisation rules, money borrowed from a CSO includes amounts borrowed from an unrelated third party based upon the CSO's guarantee.

#### DEBT UNDER AN ARM'S LENGTH SITUATION

Although the ratio of debt owed to a CSO to equity exceeds 3:1, as long as the conditions and the amount of debt owed to a CSO are reasonable compared to the debt from an independent third party, such debt from the CSO will be excluded from the scope of the debt subject to thin capitalisation rules. As a result, interest on such debt will be deductible.

Anti-thin capitalisation which originated from the arm's length principle is adopted from Article 9(1) of the OECD Model Tax Convention. Thus, if given requirements are satisfied, the debt-equity ratio prevailing in the industry (rather than a 3:1 or 6:1 ratio) will be applied.

#### MUTUAL AGREEMENT PROCEDURE (MAP)

If a Korean resident individual or domestic company or a non-resident individual or foreign company (a non-resident individual or a foreign company which has permanent establishment (PE) in Korea requests that his/her/its case be resolved through consultation with the competent authorities under an applicable tax treaty, the Minister of Finance and Economy or the Commissioner of the National Tax Service shall invoke the mutual agreement procedures (MAP).

## INTERNATIONAL TAX COOPERATION

The LCITA and its enforcement decree accept the general principle that income classification under a Korean tax treaty takes priority over that of the domestic tax law.

Under the LCITA and its enforcement decree, the Korean tax authority may request the tax authority of a treaty partner to collect the Korean taxes, subject to any limitations provided for in the treaty. Similarly, if the treaty partner requests the Korean tax authority to cooperate in collecting its taxes from a Korean resident, the Korean tax authority may collect the treaty partner's tax in accordance with the procedure for the collection of national taxes provided in the National Tax Collection Law.

The Korean tax authority may exchange tax information with foreign countries with which Korea has entered into tax treaties, subject to the provisions and limitations of the tax treaties.

If necessary, the Korean tax authority is permitted to 1) simultaneously conduct a tax audit with foreign tax authorities concerned, under the convention for cooperation in tax administration with that foreign country or 2) dispatch Korean tax officials to the concerned foreign country to conduct a direct tax audit of the company in that country.

As of the end of June 2009, Korea entered into bilateral tax treaties (conventions for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital) with 70 countries.

In addition to the primary objective of avoiding international juridical double taxation, tax treaties serve purposes such as promoting the introduction of advanced technology and capital from abroad, as well as encouraging business expansion of domestic companies in foreign countries.

## 7 – ACCOUNTING & REPORTING

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### **FINANCIAL ACCOUNTING STANDARDS, COMMERCIAL CODE AND TAX LAW**

The production of the financial reports of business activities in Korea is regulated by the Commercial Code, the Corporate Tax Act, the Securities Transaction Tax Act, and the Act on External Audit of Stock Companies, the Certified Public Accountant Act, the Financial Accounting Standards and the Audit Standards.

Although the Commercial Code lists as financial statements the balance sheet, statement of income and statement of retained earnings or deficit, the Financial Accounting Standards adds to this list the statement of cash flows and notes to financial statements.

Since tax law is based on the major premises of fair taxation and the system in which revenue and expenses are incurred as prescribed in the law, tax accounting is bound to produce figures different from those produced in financial reports in accordance with the Financial Accounting Standards, which are based on the accrual basis and realisation principle. The recent trend in legislation, however, is that the gaps between financial accounting and tax accounting are reduced.

### **REVIEW OF AUDIT QUALITY CONTROL**

As a result of amendments to the Enforcement Decree of the Act on External Audit of Corporations that allowed the FSS (Financial Supervisory Service) to review the audit quality controls of major accounting firms, the FSS conducts review of an audit quality control of accounting firms which are selected on purpose or on a sampling basis for the review. The FSS makes recommendations on weaknesses identified during the audit quality review and reports the results to the Securities and Futures Commission. Firms are required to submit follow-up reports on improvements made to their audit quality controls.

A statement of protocol was signed with the US Public Company Accounting Oversight Board to facilitate cooperation in the oversight of auditors and conduct a joint audit quality control review of a US accounting firm in Korea.

### **INTERNAL ACCOUNTING CONTROLS**

The FSS prepared guidelines on implementing best practices for internal accounting management at large listed companies, as well as small-medium enterprises (SMEs) and unlisted companies.

Unlisted SMEs were judged to be in compliance with the best practices if they complied with certain requirements under the Act on External Audit of Corporations. The criteria of the Korean Institute of Certified Public Accountants (KICPA) were also used as a guide when reviewing a company's internal accounting management system.

### **EXTERNAL AUDIT**

A joint stock corporation whose total asset is equal to or greater than KRW 10 billion shall be required to have an independent audit of its financial statements (including consolidated financial statements).

### INTERNATIONAL FINANCIAL REPORTING STANDARDS

Since 2011, Korea has adopted International Financial Reporting Standards (IFRS) as its accounting standards mandatorily for all listed companies and since 2009, voluntarily for those companies whose stocks were listed on the international stock exchange.

For unlisted companies, however, Korea adopted to use Korean GAAP (Generally Accepted Accounting Standards) in order not to lay additional burden on medium and small-sized companies to convert their financial statements, under the consideration that they don't have as many interested parties in their accounts as listed companies do.

## 8 – UHY REPRESENTATION IN KOREA

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# UHY SEIL ACCOUNTING CORP KOREA, REPUBLIC OF



## CONTACT DETAILS

UHY Seil Accounting Corp  
Room 201, Mayflower Member's Building  
1688-6 Seocho-dong  
Seocho-gu  
Seoul  
Korea, Republic of  
Tel: +82 2 523 5500  
Fax: +82 2 525 4006  
www.seiltax.co.kr

Year established: 2003  
PCAOB registered?: Yes  
Number of partners: 17  
Total staff: 80

## CONTACTS

Liaison contact: Sam-Won Hyun  
Position: Senior Partner  
Email: cpahn@hanmail.net

## OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

A total of four offices in Seoul.

## BRIEF DESCRIPTION OF FIRM

Seil Accounting Corporation currently provides assurance and business advisory services, tax and legal services, corporate finance services, management consulting services and education services. We have 17 partners and 22 professional staff. The corporation has one principal office and three branches, and plans to build professional network across the country.

## SERVICE AREAS

Assurance and business advisory service  
Audit financial statements  
External audit of stock companies  
Audit non profit corporation and forensic audit  
Consulting on internal control system  
Tax and legal services  
Corporation and personal tax  
Bookkeeping and outsourcing services  
Tax planning and tax appeals  
Corporate finance services  
Mergers and acquisitions, valuations  
Management consulting services  
FCM, BPR, HR consulting  
IFRS advisory services

## SPECIALIST SERVICE AREAS

Consulting and handling service for incorporation of foreign subsidiary and establishment of foreign branch in Korea.

## PRINCIPAL OPERATING SECTORS

Car manufacturing and components  
Construction



The network  
for doing  
business



# UHY SEIL ACCOUNTING CORP KOREA, REPUBLIC OF



Real Estate and Rental and Leasing  
Retail  
Transportation (road/rail/water) & infrastructure

## LANGUAGES

Korean, English.

## CURRENT PRINCIPAL CLIENTS

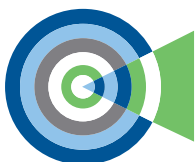
Taegu Department Store Co Ltd (KOSPI)  
Dong-il Metal Co Ltd (KOSDAK)  
Cheil Grinding Wheel Industrial Co Ltd (KOSPI)  
Namyung Vivien Corporation (KOSPI)  
Baemyung Metal Co Ltd (KOSPI)  
Tae-Yang Ind Co Ltd (KOSDAK)  
Seungil Corporation  
Daemyung Co Ltd (Non KRX)  
Buchun Terminal (Non KRX)  
ENF Technology Co Ltd(KOSDAK)

## OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST

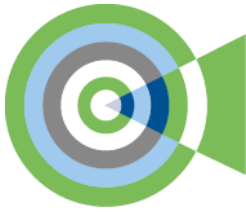
United States of America, United Kingdom, Finland, Sweden, Germany, Switzerland, Canada, China, Hong Kong, Singapore, Malaysia, Indonesia, Japan.

## BRIEF HISTORY OF FIRM

Seil Accounting Corp formed in March 2003 and established its office in Mokdong. Further branches were established in Songpa and Chungmuro in August 2005. In December 2005 the Mokdong office moved to Youido and in the same month the firm joined UHY.



The network  
for doing  
business



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## LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

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