



MERGERS AND ACQUISITIONS

South Korea

Taxation of Cross-Border
Mergers and Acquisitions

2010 Edition

TAX

South Korea

Introduction

Mergers and acquisitions (M&A) opportunities in Korea have increased in recent years. A growing number of companies are turning their attention to M&A to compete in the global economy, expand operations, and gain various synergistic benefits. As the number of M&A deals in Korea grows, the Korean government continues to provide tax and other benefits to encourage them.

With regard to the taxation of cross-border mergers and acquisitions this chapter focuses on the following issues:

- Asset purchase or share purchase
- Choice of acquisition vehicle
- Choice of acquisition funding

Tax is only one part of transaction-structuring. The Korean Commercial Law governs the legal form of a transaction and accounting issues are also highly relevant when selecting the optimal structure. When investors are planning cross-border mergers or acquisitions, they should consider these other matters.

Recent Developments

KPMG in Korea summarizes recent key developments that may affect cross-border M&A:

Introduction of Partnership Taxation

Entities including Hapmyong Hoesa, Hapja Hoesa, and certain Yuhan Hoesa that provide personal services can elect to be treated as partnerships, if certain conditions are met. In Korea, a partnership will be a flow-through entity not subject to corporate income tax. Each partner will be subject to corporate income tax or individual income tax based on their shares of the profit earned by the partnership. The partners are taxed on the profits earned by the partnership and not the actual distribution of profits. Partnership taxation became effective from 2009.

Tax-Loss Carry-Forward Period

Under the revised tax law, tax losses can generally be carried forward for up to 10 years without conditions.

Amendment of the Laws on the Use of Tax-Loss Carry-Forwards of the Surviving Company

Prior to this amendment there were no restrictions in the case of a merger, on the use of tax-loss carry-forwards on the surviving company. However, under the revised tax law, the tax loss carry-forwards of the surviving company can only be used to offset profits generated from the original business of the surviving company. Similarly, the tax-loss carry-forwards of the dissolved company can only be used to offset the profits from the business of the dissolved company. This amendment became effective from 1 January 2009.

Introduction of the Consolidated Tax System

From 1 January 2010, Korea adopted a consolidated tax system under which a company and its wholly-owned subsidiary(ies) that economically constitute one entity will be regarded as a single taxable entity for tax calculation and payment. The election to file consolidated returns is optional, but once made, it is irrevocable for four years.

If a wholly-owned group elects to file consolidated returns, the consolidated group will be considered a single taxable entity. The consolidated tax base will be the sum of the profits of each of the consolidated group members for the consolidation business year after deducting consolidated tax loss, tax-exempt income, and tax credits. The tax limits for donations, business entertainment expenses, and deduction of dividend income will be calculated as a whole and applied separately to each member of the consolidated group.

The tax rates for the consolidated group are the corporate income tax rates. Consolidated tax returns must be submitted to the competent tax authority within four months of the end of each business year.

Reduction of Corporate Income Tax Rates

The Korean government has reduced corporate income tax rates. The amended rates are as follows:

| Taxable income | Tax Rate (%) | |
|-----------------------|---------------------|----------|
| | FY 2010 and FY 2011 | FY 2012~ |
| Up to KRW 200 million | 11 | 10 |
| Over KRW 200 million | 22 | 20 |

In addition, a resident surtax is levied at 10 percent of corporate income tax.

Asset Purchase or Share Purchase

Investors may purchase a company by way of an asset purchase or a share purchase. Each method has its own tax advantages and disadvantages.

Purchase of Assets

Under Korean tax laws there are two main types of asset purchase arrangement – individual asset transfers and comprehensive business transfers. When, at the seller/purchaser’s discretion, only selected assets or liabilities are transferred, such a transfer will be classified as an individual asset transfer. If substantially all the business-related rights, assets, liabilities, and employees of a company or a division of a company are transferred in a comprehensive manner, such that the nature and the continuity of the business are sustained after the transfer, the transaction will be deemed a comprehensive business transfer for Korean tax purposes.

Purchase Price

Assets and liabilities are valued in the course of an asset purchase, which may result in a capital gains tax liability for the seller, and affect the depreciable amount for the buyer. If a comprehensive business is purchased at its fair market value, the acquisition cost of the target business’ assets may be stepped up (or down) to the fair market value. In this case, the buyer needs to apportion the total consideration to each asset acquired.

Goodwill

Goodwill is the excess amount of the consideration paid over the fair value of the net assets transferred. For tax purposes, goodwill can be amortized straight-line over a period of five years or longer (but not more than 20 years).

Depreciation

The depreciation cost of the assets charged in the accounts is deductible for tax purpose, provided it is calculated based on the depreciation method and useful

life stipulated under the corporate income tax law, which specifies the applicable depreciation method and useful life for each type of asset. Taxpayers mainly choose the straight-line method, declining-balance method, or unit-of-production method to depreciate assets. An impairment loss for an asset is generally not tax deductible except in certain cases.

Tax Attributes

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

Value-Added Tax (VAT)

VAT implications on the asset transfer depend on whether such a transfer is classified as an individual asset transfer or a comprehensive business transfer under the Korean tax law. In the case of an individual asset transfer, a seller should withhold VAT at 10 percent from a buyer and remit the collected VAT to the relevant tax authority. A comprehensive business transfer is exempt from VAT taxes.

Transfer Taxes

Stamp Duty

Stamp duty is levied on the transfer of certain assets listed in the stamp duty law. The rate of stamp duty varies according to the asset acquired. Transfers of real estate are subject to stamp duty ranging from KRW 20,000 to KRW 350,000, depending on the acquisition price.

Acquisition Tax

Under the Korean Local Tax Law, a company acquiring land, buildings, vehicles or certain memberships (such as golf memberships, condominium memberships, and/or sports complex memberships) will be liable to the acquisition tax at a rate of 2.2 percent, including 10-percent surtax, on the transfer price of such taxable assets. In certain cases, the applicable acquisition tax rate will be above the normal rate.

Registration Tax

Registration tax should be paid at the time certain acquired assets, such as land, buildings, vehicles, etc.,

are registered with the relevant registry. As in the case of the acquisition tax, the tax base for registration tax is the acquisition price of the acquired assets. The registration tax rate ranges from 1.2 percent to 6 percent (including surtax).

Purchase of Shares

Under the Korean tax law, the following tax implications may arise on the transfer of shares.

Tax Indemnities and Warranties

In a share transfer, the purchaser takes over all assets and related liabilities together with contingent asset and liabilities. It is, therefore, normal for the purchaser of shares to require more extensive indemnities and warranties than in the case of an asset transfer.

Tax Losses

In the case of a change of ownership, the tax losses of a Korean company will, in principle, transfer along with the company.

Crystallization of Tax Charge

Since the purchase in a share transfer should assume the historical tax liability of the target company for the previous periods within the statute of limitations in Korea, it is usual for the purchaser to obtain an appropriate indemnity from the seller.

Transfer Taxes

Security Transaction Tax

A securities transaction tax (STT) is imposed on the transfer of stock of a corporation established under the Commercial Code or any special act, or on the transfer of interest in a partnership, limited partnership, or limited liability company established under the Commercial Code. The securities settlement corporation and securities companies are required to collect tax at the time of a transaction. The tax is computed by multiplying the tax base by the tax rate (0.3 percent or 0.5 percent). If the transfer price is lower than the fair market value in the case of a related-party transaction, the fair market value would be used as the tax basis for STT calculation purposes.

Deemed Acquisition Tax

In the case of a share transfer, in general, no acquisition tax or registration tax will be levied. An exception to this general rule will apply if the invested company has certain statute-defined underlying assets (such as land, buildings, structures, vehicles, certain equipment, various memberships, etc.) that are subject to

acquisition tax. If the investor and its affiliates collectively acquire in the aggregate 50 percent or more of the shares in the target company, they will be deemed to have indirectly acquired those taxable properties through the share acquisition, and will therefore be subject to the acquisition tax.

Tax Clearances

It is possible to obtain a tax clearance certificate in advance from the Korean tax authorities to confirm whether there are outstanding tax liabilities on the date the tax clearance certificate is issued.

Choice of Acquisition Vehicle

There are several acquisition vehicles available to a foreign investor. The tax burden may differ according to the type of acquisition vehicle.

Local Holding Company

A local holding company may be used as a vehicle for the acquisition of a local company. In this case, by borrowings, the local company can deduct the interest expense against its taxable income within the limits prescribed by Korean tax law. When the debt is borrowed from a related foreign shareholder, the interest rate should be set at an arm's-length rate equal to the market rate.

The following forms of business entity are available in Korea.

Chusik Hoesa

The Chusik Hoesa is the only business organization permitted to issue shares or bonds and to the public and is, therefore, the most common form of business entity in Korea. It also has a higher status than other forms.

Yuhan Hoesa

A Yuhan Hoesa is a closely-held corporation which may not have more than 50 shareholders. However, one possible advantage of using a Yuhan Hoesa is that it may be possible to obtain flow-through tax treatment for U.S. tax purposes. As such, Yuhan Hoesa is eligible to check-the-box under the U.S. tax law.

Hapmyong Hoesa (Partnership)

A Hapmyong Hoesa is organized by two or more partners who bear unlimited liability for the obligations of the partnership. A Hapmyong Hoesa is a separate entity and subject to corporate income tax.

Hapja Hoesa (Limited Partnership)

A Hapja Hoesa consists of one or more partners having unlimited liability and one or more partners having limited liability. Similar to a Hapmyong Hoesa, a Hapja Hoesa is a separate entity and subject to corporate income tax.

Foreign Parent Company

The foreign investor may make an acquisition itself. Under the Korean tax law, dividend and interest payments to a foreign company that does not own a Korean company are subject to withholding tax (WHT) under the Korean tax law. If the foreign country has a tax treaty with Korea, the WHT tax may be reduced. In addition, since the WHT rates vary depending on the tax treaty, subject to comments below, an intermediary company resident in a jurisdiction which has a more favorable tax treaty with Korea may be used.

Non-Resident Intermediate Holding Company

Capital gains on the disposal of shares in a Korean company by a foreign shareholder company are generally subject to Korean tax, except for certain cases. Dividends and interest payments made to a foreign company are also generally subject to tax. A foreign shareholder tax-resident in a foreign jurisdiction that has a double tax treaty with Korea may, however, enjoy tax treaty benefits, so an intermediate company resident in a more favorable jurisdiction should be considered. However, to be eligible for tax treaty benefits, the intermediate holding company should meet the anti-treaty shopping provisions in Korean tax law and the relevant tax treaty.

Local Branch

A branch may also be used as an acquisition vehicle. The advantage is that there are no minimum capitalization requirements and usually no branch profits tax¹ when the branch remits its earnings to its head office. A disadvantage is that operating funds regarded as capital in the Korean branch may not be remitted outside of Korea until the branch is liquidated. Operating profits may still be distributed annually.

Joint Ventures

In most industries, foreign investors may invest without any ownership restrictions, but for certain industries such as newspapers, telecommunications, and broadcasting, the Korean government encourages foreign investors to establish joint venture companies with Korean partners rather than establish wholly-

owned subsidiaries. In these industries, the government restricts the amount of foreign ownership to a designated percentage.

Choice of Acquisition Funding

Debt

The investor can use debt and/or equity to fund its investment. The dividend is not tax deductible, but interest can be deducted from taxable income and expenses incurred in the course of borrowing, such as guarantee fees and bank fees, can be deducted for tax purposes. Therefore, the investor often prefers to use debt.

Deductibility of Interest

In general, interest expenses incurred in connection with a trade or business are deductible for Korean corporate tax purposes. However, certain interest expenses are not deductible including, but not limited to, the following cases:

- interest on debt incurred specifically for use in construction projects or for the purchase of fixed assets;
- interest on private loans where the source is unknown;
- interest the recipient of which cannot be identified;
- interest on debt used for the purchase of non-business related assets; and
- interest paid to the foreign controlling shareholder that exceeds the limit under the thin-capitalization rules.

Korean tax law contains a thin capitalization rule that stipulates that if a Korean company borrows from its foreign controlling shareholder an amount in excess of three times its equity (six times in the case of a financial institution), interest on the excess portion of the borrowing will not be deductible in computing taxable income. Money borrowed from a foreign controlling shareholder includes amounts borrowed from an unrelated third party based on guarantees provided by a foreign controlling shareholder. The non-deductible amount of interest shall be treated as a deemed dividend or other outflow of income and WHT may apply.

¹ Korean branch of foreign corporations resident in France, Canada, Indonesia, Kazakhstan, Morocco, Australia, Philippines, and Brazil would be subject to branch profits tax.

Withholding Tax on Debt and Methods to Reduce or Eliminate

When a Korean company pays interest to its foreign lender, the payment is subject to Korean WHT at a rate of percent, but this could be reduced if the recipient is a foreign lender resident in a jurisdiction that has an applicable double tax treaty with Korea and other interest payments to foreign lenders may be exempt from withholding tax if certain conditions are met.

Checklist for Debt Funding

- Consider whether the use of debt may trigger disallowed interest deductions under the thin-capitalization rules and also whether the interest rate is arm's length, as required by transfer pricing rules
- WHT of 22 percent would apply on interest payments made to a foreign lender that lacks a Korean permanent establishment unless a lower WHT rate is available under the relevant tax treaty.

Equity

An investor may use equity to fund its acquisition.

When capital is injected into a Korean company by an investor, a capital registration tax will be imposed at a base rate of 0.48 percent (including surtax) of the par value of the shares issued on incorporation, and on the par value of the shares issued in subsequent capital increases. In certain cases, the applicable capital registration tax rate will be triple the normal rate.

Dividends made to a foreign shareholder that lacks a Korean permanent establishment are not deductible for tax purposes and are subject to WHT at the rate of 22 percent in the absence of a relevant tax treaty. The actual rate will depend on the tax treaty.

Mergers

Mergers are allowed in Korean between Korean domestic companies. Usually, a merger may result in various tax implications for the involving parties (that is, dissolving company, shareholders of the dissolving company, or the surviving company.) However, if the merger is carefully planned and executed, substantial part of merger related taxes may be mitigated or deferred, especially if the merger is considered as qualified merger as described later in the chapter.

A merger satisfying the following basic conditions will be considered a "qualified merger" for Korean tax purposes:

- Both involved companies (that is, surviving and dissolving companies) have been engaged in business for one year or longer as of the merger date.
- If consideration is paid, at least 95 percent of the consideration paid to the shareholder of the dissolving company consists solely of shares in the surviving company.
- The surviving company continues to carry out the operations of the transferred business until the end of the fiscal year in which the merger takes place.

Discounted Securities

Securities can be issued at a discount when the nominal interest rate is below the market interest rate. The difference between the nominal price and the issue price may be deducted over the life of the security. However, when the lender is a related party the interest rate should be based on the arm's length rate to avoid any transfer pricing tax adjustments.

Other Considerations

Company Law and Accounting

The company law prescribes conditions and procedures related for establishing and liquidating of an entity and in M&A-type transactions, such as mergers, split-offs, spin-offs, etc. When the company fails to comply with the necessary legal and other procedures necessary for the merger and acquisition, it may result in an invalid contract.

Group Relief/Consolidation

Group relief or consolidation is available when the controlling company holds 100 percent of the outstanding share of the target company and the target company's head office is located in Korea. Thus, when the subsidiary is a foreign company, the foreign subsidiary may not be included in a consolidated filing for tax purposes.

Transfer Pricing

Under the Korean tax law, the tax authorities have the authority to adjust a transfer price and recalculate a resident's taxable income when the transfer price used between a Korean company and its foreign related-party is either below or above the arm's length price.

The arm's length price should be determined by the most reasonable method applicable to the situation. The method and the reason for adopting a particular method for the arm's length price determination should be

disclosed by the taxpayer to the tax authorities in a report submitted with the annual tax return.

Foreign Investments of a Local Target Company

If a Korean company or an individual invests in a company located in a tax haven country, which has unreasonably retained profits in the controlled foreign company (CFC), the profits reserved therein shall be treated as dividends paid out to that Korean company or individual, despite the fact that the reserved profits have not been actually distributed.

When the total shares in a CFC directly or indirectly held by a Korean resident individual or company and directly held by his/her/its family members as defined in the Civil Law together account for 20 percent or more of the voting shares in the foreign company, such Korean resident individual or company will be subject to the anti-tax haven rules.

The rules are intended to regulate a company which has made abnormal overseas investments. They apply to Korean companies that have invested in a company incorporated abroad that is subject to an effective tax rate of 15 percent or less on average on accrued income for a period of three years.

However, if a company incorporated in such a tax haven country actively engages in business operations through an office, a shop, or a factory that is required for such business operations, the anti-tax haven rules will not apply.

Exceptionally, if a CFC holds at least 50 percent of the shares of subsidiaries in the same jurisdiction for more than six months, and interest income and dividend income from its subsidiaries in its jurisdiction accounts for 90 percent or more of its come, such CFC rule will not apply.

Comparison of Asset and Share Purchases

Advantages of Asset Purchases

- The purchase price can be depreciated (amortized) for tax purposes.
- The historical liabilities of the company are not transferred to the new or surviving company.
- There is no transfer of any retained earnings and possible tax liabilities associated with such transfer.
- It is possible to acquire only part of a business.

Disadvantages of Asset Purchases

- The benefit of any tax losses incurred by the target company remains with the seller.
- The buyer may be subject to acquisition tax and registration tax upon purchase of applicable assets.

Advantages of Share Purchases

- The buyer may benefit from tax losses of the target company.
- The buyer may gain the benefit of existing supply or technology contracts.

Disadvantages of Share Purchases

- The buyer would bear secondary tax liability of a target company as a majority shareholder.
- The buyer may be subject to deemed acquisition tax.
- No deduction is available for the purchase price until the disposal of the shares.
- The seller would be subject to securities transaction tax.

Withholding Tax Rate Chart

The Korea International Tax Coordination Law prioritizes the Korean double tax arrangements (DTAs) over the domestic tax law. The Korean tax authority may exchange tax information with other contracting states (those countries who have concluded DTAs with Korea), subject to the provisions and limitation of the DTAs.

As of September 2009, Korea has entered into bilateral DTAs with 74 countries. While the primary objective of the DTAs is the avoidance of international double taxation, these DTAs serve to promote the introduction of advanced technology and capital from abroad, as well as to encourage business expansion of domestic companies in foreign countries.

The withholding tax rates that are applicable to dividend, interest, and royalty payments by Korean companies to non-residents under the relevant DTAs are as follows.

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

| Country | Dividends | | Interest ¹ (%) | Royalties (%) |
|----------------|----------------------------|--------------------------|---------------------------|---------------------|
| | Individuals, Companies (%) | Qualifying Companies (%) | | |
| Australia | 15 | 15 | 15 | 15 |
| Austria | 15 | 5 ² | 10 | 2/10 ³ |
| Bangladesh | 15 | 10 ⁴ | 10 | 10 |
| Belarus | 15 | 5 ² | 10 | 5 |
| Belgium | 15 | 15 | 10 | 10 |
| Brazil | 15 | 15 | 10/15 ⁵ | 15/25 ⁶ |
| Bulgaria | 10 | 5 ⁷ | 10 | 5 |
| Canada | 15 | 5 ² | 10 | 10 |
| Chile | 10 | 5 ² | 10/15 ⁸ | 5/15 ³ |
| China | 10 | 5 ² | 10 | 10 |
| Croatia | 10 | 5 ² | 5 | 0 |
| Czech Republic | 10 | 5 ² | 10 | 10 |
| Denmark | 15 | 15 | 15 | 10/15 ⁹ |
| Egypt | 15 | 10 ² | 10/15 ¹⁰ | 15 |
| Fiji | 15 | 10 ² | 10 | 10 |
| Finland | 15 | 10 ² | 10 | 10 |
| France | 15 | 10 ⁴ | 10 | 10 |
| Germany | 15 | 5 ² | 10 | 2/10 ³ |
| Greece | 15 | 5 ² | 8 | 10 |
| Hungary | 10 | 5 ² | 0 | 0 |
| Iceland | 15 | 5 ² | 10 | 10 |
| India | 20 | 15 ¹¹ | 10/15 ⁸ | 15 |
| Indonesia | 15 | 10 ² | 10 | 15 |
| Ireland | 15 | 10 ⁴ | 0 | 0 |
| Israel | 15 | 5/10 ¹² | 7.5/10 ⁸ | 2/5 ³ |
| Italy | 15 | 10 ² | 10 | 10 |
| Japan | 15 | 5 ² | 10 | 10 |
| Jordan | 10 | 10 | 10 | 10 |
| Kazakhstan | 15 | 5 ⁴ | 10 | 10 |
| Korea (DPRK) | 10 | 10 | 10 | 10 |
| Kuwait | 10 | 10 | 10 | 15 |
| Laos | 10 | 5 ⁴ | 10 | 5 |
| Lithuania | 10 | 5 ² | 10 | 5/10 ³ |
| Luxembourg | 15 | 10 ² | 10 | 10/15 ³ |
| Malaysia | 15 | 10 ² | 15 | 10/15 ¹³ |
| Malta | 15 | 5 ² | 10 | 0 |
| Mexico | 15 | 0 ⁴ | 5/15 ⁸ | 10 |
| Mongolia | 5 | 5 | 5 | 10 |
| Morocco | 10 | 5 ² | 10 | 5/10 ¹⁴ |
| Myanmar | 10 | 10 | 10 | 10/15 ³ |
| Nepal | 15 | 5/10/15 ¹⁵ | 10 | 15 |
| Netherlands | 15 | 10 ² | 10/15 ¹⁰ | 10/15 ¹⁶ |

| Country | Dividends | | Interest ¹ (%) | Royalties (%) |
|----------------------|----------------------------|--------------------------|---------------------------|-----------------------|
| | Individuals, Companies (%) | Qualifying Companies (%) | | |
| New Zealand | 15 | 15 | 10 | 10 |
| Norway | 15 | 15 | 15 | 10/15 ¹⁶ |
| Oman | 10 | 5 ⁴ | 5 | 8 |
| Pakistan | 12.5 | 10 ¹¹ | 12.5 | 10 |
| Papua New Guinea | 15 | 15 | 10 | 10 |
| Philippines | 25 | 10 ² | 10/15 ¹⁷ | 15 |
| Poland | 10 | 5 ⁴ | 10 | 10 |
| Portugal | 15 | 10 ² | 15 | 10 |
| Romania | 10 | 7 ² | 10 | 7/10 ¹⁶ |
| Russia | 10 | 5 ¹⁸ | 0 | 5 |
| Singapore | 15 | 10 ² | 10 | 15 |
| Slovak Republic | 10 | 5 ² | 10 | 10 |
| Slovenia | 15 | 5 ² | 5 | 5 |
| South Africa | 15 | 5 ² | 10 | 10 |
| Spain | 15 | 10 ² | 10 | 10 |
| Sri Lanka | 15 | 10 ² | 10 | 10 |
| Sweden | 15 | 10 ² | 10/15 ¹⁹ | 10/15 ¹⁶ |
| Switzerland | 15 | 10 ² | 10 | 10/ |
| Thailand | 10 | 10 | 10/15 ²⁰ | 5/10/15 ²¹ |
| Tunisia | 15 | 15 | 12 | 15 |
| Turkey | 20 | 15 ² | 10/15 ¹⁰ | 10 |
| Ukraine | 15 | 5 | 5 | 5 |
| United Arab Emirates | 10 | 5 ⁴ | 10 | 0 |
| United Kingdom | 15 | 5 ² | 10 | 2/10 ³ |
| United States | 15 | 10 ²² | 12 | 10/15 ²³ |
| Uzbekistan | 15 | 5 ² | 5 | 2/5 ³ |
| Vietnam | 10 | 10 | 10 | 5/15 ³ |

Notes

- Many of the treaties provide for an exemption for certain types of interest, such as interest paid to public bodies and institutions, banks, or financial institutions, or in relation to sales on credit or approved loans. Such exemptions are not considered in this column.
- The rate generally applies to participations of at least 25 percent of capital or voting power, as the case may be.
- The lower rate applies to royalties in the case of the use, or the right to use, industrial, commercial, or scientific equipment.
- The rate generally applies to participations of at least 10 percent of capital or voting power, as the case may be.
- The lower rate applies if the loan period extends to seven years or more, the recipient is a financial institution, and the loan is used for certain designated purposes.
- The higher rate applies to royalties arising from the use or the right to use trademarks.
- The rate applies to dividends paid to a company (other than a partnership) that holds directly at least 15 percent of the capital of the Korean company.
- The lower rate applies to payments to a bank, financial institution, or insurance company, as the case may be.
- The lower rate applies to industrial investment.
- The lower rate applies to a loan period of longer than three years (treaty with Egypt), two years (treaty with Turkey), or seven years (treaty with the Netherlands).
- The rate generally applies to participations of at least 20 percent of capital.
- A 5-percent rate applies if a recipient holds at least 10-percent ownership in a paying corporation; however, in such a case, 10 percent applies if the dividends are paid out of profits subject to tax at a lower rate than the normal corporate tax rate in Korea.
- Ten percent applies to payments for the use of, or the right to use, any patent, know-how, trademark, design or model, plan, secret formula or process, copyright of any scientific work, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience; 15 percent applies to payments for the use of, or the right to use, any copyright of a literary or artistic work including cinematographic films, or tapes for radio or television broadcasting.
- The lower rate applies to copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work (but not including royalties in respect of motion picture films and works on film or videotape for use in connection with television).
- Five percent applies to dividends paid to a company which holds directly at least 25 percent of the shares of the Korean company, and 10 percent to dividends paid directly to a company which holds directly at least 10 percent of the shares of the Korean company. And, 15 percent to all other dividends.
- The lower rate applies to royalties for the use of, or right to use, a patent, trademark, design or secret formula, or industrial, commercial and scientific equipment, or information.
- The lower rate applies in cases where the interest is paid in respect of public issues of bonds, etc.
- The rate applies to dividends paid to a company (other than a partnership) that holds directly at least 30 percent of the capital of the Korean company and invests not less than USD 100,000 or the equivalent amount of local currencies in the Korean company.
- The lower rate applies if the recipient is a bank and the income is connected with a loan term in excess of seven years.
- Ten percent applies to interest paid to a financial institution (including an insurance company), or paid with respect to indebtedness arising as a consequence of a sale on credit of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length; 15 percent applies in all other cases.
- The 5-percent rate applies to royalties for the use of any copyright, artistic or scientific work, including software, motion pictures and works on film, tape, or other means of reproduction used in radio or television broadcasting. The 10-percent rate applies for the use of any patent, trademark, design or model, plan, secret formula, or process, and the 15-percent rate applies for the use of industrial, commercial, or scientific equipment and experience.
- The rate applies if equity ownership is 10 percent or more and not more than 25 percent of the gross income of the Korean company for the preceding year consists of interest or dividends.
- The lower rate applies to royalties for the use of copyrighted literature, music, films and TV, or radio broadcasts.

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