

# 조세조약상 제한세율 적용절차

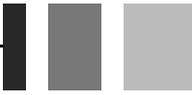
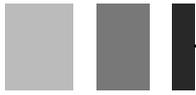
Applying for reduced tax rate under tax treaty

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This material is provided for reference for your convenience in taxation.  
If this is different from the domestic tax law, the tax law takes precedence.

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## Applying for reduced tax rate under the tax treaty

- ◆ Legal basis : Article 98 (6) of the Corporate Income Tax Law, Article 156 (6) of the Individual Income Tax Law, Article 138 (7) of the Presidential Decree to the Corporate Income Tax Law, Article 207 (7) of the Presidential Decree to the Individual Income Tax Law

### 1. Procedures for applying for the reduced tax rates for direct investment

- The investor submits an "Application for Entitlement to Reduced Tax Rate."
- The beneficial owner who wishes to apply a reduced tax rate under the relevant tax treaty applicable to his/her Korean source income needs to submit an "Application for Entitlement to Reduced Tax Rate" to the withholding agent before he or she receives the income.
  - The Application Form remains valid for 3 years from the date of submission.
  - An updated Application Form has to be submitted either 3 years after the date of submission, or before the 3 years lapse when a change has occurred in the filing.
- \* An application is not required for Korea-source income that is received through a bank account a foreign depository settlement institute holds with a Korean depository settlement institute

- Pensions, funds and other such investment vehicles listed below are treated as a single beneficial owner (i.e., single resident) and applied the reduced tax rate accordingly:
  - A pension established under the laws of a tax treaty partner country
    - \* e.g., Laws that are equivalent to the "Korean National Pension Act," "Public Officials Pension Act," "Armed Forces Personnel Pension Act," "Pension for Private School Teachers and Staff Act," and "Guarantee of Workers' Retirement Benefits Act."
  - A non-profit organization established under the laws of a treaty partner country, which does not distribute its profits to its members
  - An overseas investment vehicle recognized as beneficial owner under the tax treaty
- The withholding agent applies the reduced tax rate based on the resident country information filed in the "Application for Entitlement to Reduced Tax Rate."

## **2. Procedures for applying for the reduced tax rate for indirect investment**

- The overseas investment vehicle needs to submit the "Report of Overseas Investment Vehicle" if a Korean source income is paid through such overseas investment vehicle.
  - \* The term "overseas investment vehicle" means the activities of acquiring, disposing of, and managing in any such assets as are valuable for investment with money or similar pooled by inviting two or more persons for such investment, and distributing the yields therefrom to vest in investors or any fund management entity.

① Overseas private equity fund

- To apply for reduced tax rates, an overseas private equity fund needs to submit a "Report of Overseas Investment Vehicle" and attached "Schedule of Beneficial Owners."
- How to file the "Schedule of Beneficial Owners"
  - This Schedule is prepared and submitted by a primary overseas investment vehicle based on the "Application for Entitlement to Reduced Tax Rate" that was submitted by investors investing in that overseas investment vehicle.
  - When the list of investors includes another overseas investment vehicle ("secondary overseas investment vehicle"), that secondary overseas investment vehicle needs to submit to the primary overseas investment vehicle, its own "Report of Overseas Investment Vehicle" and attached "Schedule of Beneficial Owners" based on its own investors.

② Simplified procedure for Overseas Public Collective Investment Vehicle (OPCIV) in applying for reduced tax rates

※ Qualifications for OPCIV

- The OPCIV is an overseas investment vehicle similar to a collective investment vehicle under the Financial Investment Services and Capital Market Act and registered or approved in a tax treaty partner country.

- The securities of OPCIV are not issued by private placement and the OPCIV has 100 or more investors (an overseas investment vehicle shall be counted as one investor in this regard) as at the end of the preceding fiscal year (or, as at the date of submission of this Report if the OPCIV is newly established).
- The OPCIV is not an overseas investment vehicle subject to any tax treaty provisions that deny tax treaty benefits.
- The OPCIV needs to submit to the withholding agent or another overseas investment vehicle, documentation supporting that the applicant is an OPCIV and a Schedule containing the total investment amount and number of beneficial owners by country.
- Benefits of the simplified procedure for OPCIV
  - The applicant does not have to collect "Application for Entitlement to Reduced Tax Rate" forms from investors.
  - The applicant does not have to attach a "Schedule of Beneficial Owners."
- The withholding agent applies the reduced tax rate based on the resident country information filed in the "Report of Overseas Investment Vehicle."

### **3. Exceptions from Reduced Tax Rates**

- The withholding rate under the Korean domestic law is applied over the reduced treaty rate under the following circumstances:
  - When the applicant has not submitted either the "Application for Entitlement to Reduced Tax Rate" or "Report of Overseas Investment Vehicle"
  - When the applicant fails to provide further information supplementing the Application Form, upon the request of the withholding agent
  - When the withholding agent is unable to identify the Beneficial Owner using the information filed on the "Application for Entitlement to Reduced Tax Rate" or "Report of Overseas Investment Vehicle"
- \* This requirement does not apply to OPCIV's since they are not required to submit "Schedule of Beneficial Owners."

### **4. Documentation requirements**

- The withholding agents and overseas investment vehicles are required to maintain documents (eg, "Application for Entitlement to Reduced Tax Rate," "Report of Overseas Investment Vehicle") for 5 years; and are also required to submit these documents upon the request of the Head of the District Tax Office of the district in which the withholding agent has an address.

## **5. Claiming a refund**

- A Beneficial Owner that has not been applied the reduced tax rate may request a refund within 3 years.
  - The Head of the relevant District Tax Office must either process the refund or notify to the Beneficial Owner that he or she is not eligible for the refund within 6 months of receiving the refund claim.
  
- Required documents
  - Application for Entitlement to Reduced Tax Rate
  - Certificate of residence
  
- Request for correction to refund claim
  - When correction is required, the Head of the District Tax Office may request for correction to be submitted within 30 days of the date of request

## **6. Effectuation**

- This will apply to withholdings made for the first time on or after July 1, 2012.