

Winston & Strawn Partner Rachel Ingwer Presents on U.S. Tax Considerations for Korean Companies Interested in Acquiring U.S. Businesses

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Winston & Strawn partner Rachel Ingwer recently participated in a two-part webinar series on U.S. tax considerations for Korean companies interested in forming or acquiring a U.S. business. She presented jointly with attorneys from Kim & Chang, including former Winston partner Soyun Park. The webinars focused on practical implications of negotiating the acquisition of a U.S. business, whether as a branch, a subsidiary, or a joint venture, as well as ongoing operational issues that should be considered for inbound investment.

KEY TAKEAWAYS

SEMINAR 1: U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR KOREAN CORPORATIONS IN STARTING OR ACQUIRING A U.S. BUSINESS

- When pricing a potential U.S. target, it is important to understand the potential for a basis step up and how it should be valued.
- Rep and warranty insurance has become commonplace in the U.S. market, but buyers need to consider its limitations when it comes to tax matters.
- When possible, incentive equity generally should be issued to employees early on when valuations are low. However, cross-border considerations (including the potential for employees to move to the United States in the future) raise unique income tax issues for both employees and employers that need to be considered on a case-by-case basis.

SEMINAR 2: U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR KOREAN CORPORATIONS OPERATING IN THE UNITED STATES THROUGH SUBSIDIARIES OR BRANCHES

- The relationship between a Korean parent and a U.S. subsidiary should be conducted at arm's length and additional precautions should be taken to avoid the U.S. subsidiary or its employees creating U.S. income tax nexus for the Korean parent.
- Travel by the Korean parent's employees to the United States should be structured in a way to prevent creating a permanent establishment in the United States.

- U.S. entities owned by foreign persons are subject to additional federal income tax reporting requirements. Failure to comply with these requirements can subject U.S. entities to draconian penalties and cause their statute of limitations to remain open indefinitely for their entire return.
- If entering into a joint venture with a U.S. corporation, that will likely be structured as a partnership for U.S. federal income tax purposes. In that instance, it is important to consider how allocations and tax distributions work, who will control partnership tax decisions, and whether there need to be any special blocker provisions.

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