



Tax News Flash

- Transfer Pricing & Customs

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Samjong KPMG Transfer Pricing & Customs Service Group provides readers Transfer Pricing & Customs related recent local tax issues and trends.

This newsletter is a monthly publication of Samjong KPMG Transfer Pricing & Customs Service Group. If you need more detailed explanation, please feel free to contact key contacts or Tai-Joon Kim for transfer pricing matters and Tae-Joo Kim for customs matters.



The following are proposed amendments to Korean transfer pricing regulations

The application period of the below proposed amendments is the fiscal year beginning January 1st, 2024, unless otherwise stated.

■ Change in Local File and Master File submission deadline

Law for the Coordination of International Tax Affairs (LCITA) Article 16

Before	Local File, Master File, Country by Country Report submission deadline 12 months after fiscal year end
After	Local File and Master File submission deadline 6 months after fiscal year end. Country by Country Report submission deadline 12 months after fiscal year end.

■ Submission of Statement of Overseas Related Party Transaction

LCITA Article 16

Before	Taxpayers subject to BEPS documentation exempt from submission of Statement of Overseas Related Party Transaction 6 months after fiscal year end.
After	(Deleted)

* Taxpayers subject to BEPS documentation must separately submit the Statement of Overseas Related Party Transaction 6 months after fiscal year.

■ Exception for Tax Adjustment Imposition Period

Framework Act on National Taxes Article 26-2 (New)

Added	Korean tax authority (National Tax Service) may impose tax adjustment 1 year after tax authority is aware of the change in global minimum tax rate
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■ **Clarification of the definition of Permanent Establishment**

LCITA Article 61

Before	<p>Definition of Permanent Establishment</p> <ul style="list-style-type: none"> - Domestic business establishment in accordance with Corporate Income Tax Act - Business establishment that is similar to domestic business establishment located overseas
After	<p>Definition of Permanent Establishment</p> <ul style="list-style-type: none"> ① A place of business (including a deemed place of business) situated in a jurisdiction and treated as a Permanent Establishment in accordance with an applicable Tax Treaty in force ② A place of business (including a deemed place of business) in respect of which a jurisdiction taxes the income attributable to such place of business on a net basis if no Tax Treaty in force ③ A place of business (including a deemed place of business) situated in jurisdiction that would be treated as a Permanent Establishment in accordance with the OECD Model Tax Convention if a country has no corporate tax system ④ A place of business (or a deemed place of business) that is not already described from ① to ③ through which operations are conducted outside the jurisdiction where the entity is located provided that such jurisdiction exempts the income attributable to such operations.

■ **Exemption Criteria of GloBE Rules according to QDMTT (Qualified Domestic Minimum Top-Up Tax)**

LCITA Article 70 (New)

Added	<p>Exemption criteria for GloBE top-up tax</p> <ul style="list-style-type: none"> ① The Accounting Standard, which requires a QDMTT to be computed based on the UPE's Financial Accounting Standard or a Local Financial Accounting Standard subject to certain conditions. ② The Consistency Standard, which requires the top-up tax from QDMTT to be the same or more than top-up tax under the GloBE Rules. ③ The Administration Standard which requires the QDMTT jurisdiction to meet the requirements of an on-going monitoring process similar to the one applicable to jurisdictions implementing the GloBE Rules. (peer review on whether criteria of ① and ② are met)
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■ **Special provisions for multinational business groups in the early stages of overseas expansion**

LCITA Article 82

Before	<p>5-year exclusion from the UTPR in the early stage of overseas expansion of MNE Groups*</p> <p>* ① Located in 6 or fewer jurisdictions; ② The sum of the net book value of tangible assets is less than 50 million euros</p>
After	<p>Period to apply exclusion from the UTPR of MNE Groups in the initial phase of their international activity</p> <ul style="list-style-type: none"> - 5 years reckoned from the initial application period (January 1st, 2025) of the UTPR

* Application period: 5-year period starting from January 1st, 2025

■ **Penalty exemption related to the GloBE Top-up Tax in the Transitional Period**

LCITA Article 84

Before	Filing and payment for additional tax allocation amount - by 15 months after fiscal year end - payment in installment is accepted if tax amount exceeds KRW 10 million
After	Filing and payment for additional tax allocation amount - by 15 months after fiscal year end - payment in installment is accepted if tax amount exceeds KRW 10 million - exemption for penalty tax for non-submission, under-reporting over-refund during transitional period - penalty tax for late payment reduced by 50%

* Transition period: Fiscal Years that begin on or before 31 December 2026, and end before 30 December, 2028

■ **Exemption of penalty for error in GloBE Information Return**

LCITA Article 87

Before	Penalty for error in GloBE Information Return is to be imposed.
After	Exemption of penalty during transitional period* * Transition period: Fiscal Years that begin on or before 31 December 2026, and end before 30 December 2028 - if appropriate measures* are taken for the application of the global minimum tax, exemption of penalty *① Complete disclosure of all calculation details to tax authorities ② The misidentification is reasonable ③ The error is reasonably possible ④ Three is reasonable interpretation ⑤ If the tax burden for the current or subsequent business year is not reduced



The following is a recent Customs-related Court case in Korea

Whether the value of goods imported from a bonded area could be determined as transaction value under Article 30 of the Customs Act

[Supreme Court, 2020du51242]

Background

The Korean Customs Service has recognized the price at the time of entry into the bonded area as the transaction value for determining the customs value in bonded area transactions. This standard has also been recognized by Korea Tax Appeals Tribunal in cases considering the determination of whether the goods were “goods sold for export to Korea” as defined in Article 30 of the Customs Act as follows.

Tax Tribunal, 2017-Customs-0144

In light of the fact that Article 30(1) of the WTO Valuation Agreement and the Customs Act refer to 'goods sold for export', and the WCO Technical Committee on Customs Valuation Opinion 14.1 states that "only transactions in which goods are actually transferred between countries can use the transaction value method of customs valuation", the goods in question were traded after being imported into Korea's customs territory, so it is difficult to consider them as goods sold for export to Korea.

However, recently, a Supreme Court precedent has appeared that recognizes 'the price at the time of importation from the bonded area' as the transaction value in bonded area transaction, which is contrary to the existing standard of the Korea Customs Service, and we would like to share the relevant information.

Issue

Applicability of the method of determining the customs value under Article 30 of the Customs Act in determining the customs value of goods imported from a bonded area

Decision

The court recognized the value of the goods imported into the bonded area as the transaction value for the following reasons.

- ① If the goods at issue transited through a bonded area, it is reasonable to conclude that 'imported goods' as defined in Article 17(3) of the Enforcement Decree of the Customs Act means goods that have been brought from a bonded area and does not include goods that have merely been brought into a bonded area, as claimed by the defendant. Article 2(1) of the Customs Act defines 'importation' to mean "the importation of foreign goods into Korea (transit through a bonded zone means importation from a bonded area) or consumption or use in Korea", where 'importation' means that the goods are actually released from the restrictions imposed by the Customs Act and become domestic goods or enter into freely distributable status.
- ② The meaning of 'transaction involving the actual international movement of goods' should not be determined strictly based on the border line, regardless of whether the goods are subject to customs duties, have been cleared for importation, or have been transferred internationally throughout the transaction, and regardless of the circumstances leading up to the transaction or the overall sequence of the transaction.
- ③ Overseas exporter has consistently entered import and export contracts with domestic companies for titanium dioxide including the goods at issue. Looking at the process of concluding import and export contracts, it is difficult to conclude that the goods at issue do

not constitute 'imported goods' or 'goods for export and sale' as defined in the Article 30(1) of the Customs Act by considering this transaction as a domestic transaction.

KPMG's comment

The court noted that importation, the opposite of exportation, means 'the process of being released from the restrictions of the Customs Act and being converted into domestic goods in Korea', and that the export sales transaction referred to in the above Customs Act should be interpreted in terms of importation. Even if the goods are physically located in Korea, they are not exported to Korea until they are delivered from the bonded area to the plaintiff by specific order of the plaintiff, so the price agreed between the plaintiff and the overseas exporter is also recognized as the transaction price applicable to this export sales transaction. It is reasonable in that the court defined export or import in a normative way, not simply the physical movement of goods, and determined the transaction that caused such export or import, and this legal reasoning will have great implications for similar cases in the future. That is, this court case is significant in Korea as it means that if there is an issue of determining the customs value of a transaction through a bonded area, it can be determined differently depending on the individual transaction structure based on the new court case.

If the company have a bonded area transaction and have been determining the customs value based on the existing standards of the Korea Customs Service, it is recommended to obtain professional opinions and explore the opportunity to apply for the tax refunds by trying to receive an official ruling.



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