



Tax News Flash

- Transfer Pricing

24 June 2024

Samjong KPMG Transfer Pricing & Customs Service Group provides readers with Transfer Pricing 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 Young-Ho Lee for transfer pricing matters and Tae-Joo Kim for customs matters.



The following is a recent Korea's tax ruling in relation to transfer pricing

It is deemed appropriate for the tax authority to obtain necessary documents from the claimant to reassess the validity of the contents of the TP report and etc submitted by the claimant and reassess the tax base and amount of tax accordingly. (Admitted – Reassessment required).

<Tax Tribunal Judgment 2021Seo2808, 2022.12.05>

Background

- The claimant, established on January 8, 1997, with the primary business objective of manufacturing and selling dental implants, operates 28 subsidiaries in 25 countries as of the 2018 fiscal year. The claimant sells dental implant finished products and dental equipment to its other foreign related parties (hereinafter referred to as "overseas sales corporations").
- The claimant prepared a 'Transfer Pricing Policy Report on Transactions with Foreign Related Parties' (hereinafter referred to as the "TP Report") to manage transfer prices for transactions of goods with overseas sales corporations. For the fiscal years 2014 to 2018 (hereinafter referred to as the "Disputed Fiscal Years"), the claimant calculated and reported the arm's length prices using the transactional net margin method when filing corporate tax returns. However, even though the operating profit margins of some overseas sales corporations during the disputed fiscal years exceeded or fell short of the arm's length price range outlined in the TP Report (hereinafter referred to as the "the Arm's Length Price"), no additional compensatory adjustments were made.
- (c) From May 21, 2019, to September 8, 2019, the tax authority conducted a comprehensive corporate tax audit on the claimant's disputed fiscal years. The tax

authority made the transfer pricing adjustment for the entities' whose profit levels exceeded the Arm's Length Price for the fiscal years 2014 to 2016 regarding ○○○ corporation located in ○○○ (hereinafter referred to as the "○○○ Corporation"). Consequently, the tax authority imposed a total corporate tax of ○○○ won for the disputed fiscal years.

- (d) On March 30, 2020, the claimant requested from the ○○○ Tax Office that the Arm's Length Price should be applied to other overseas sales corporations, as well as the ○○○ Corporation, for the disputed fiscal years to adjust the taxable income and tax amount accordingly.
- However, the request for correction concerning overseas sales corporations except for ○○○ Corporation was denied. Dissatisfied with this decision, the claimant filed an appeal on April 2, 2021.

Tax Office's (Defendant) Claims

- The claim that the income should be transferred to local subsidiaries through an amended tax return, given that many of the claimant's overseas sales subsidiaries are in a deficit state, is unfounded. The income reported as transferred has not actually been paid or remitted to the local subsidiaries, so it has no substantial impact on the claimant's net assets.
- The operating losses of the claimant's overseas sales subsidiaries are not attributable to the transfer prices of the claimant's products. The overall cause of the operating losses is due to immature sales volumes and excessive selling, general, and administrative expenses, as well as the costs associated with training (AIC).
- Article 4 of the Law for Coordination of International Tax Affairs (hereinafter referred to as "LCITA") means that it is mandatory to adjust the remaining taxable years for the overseas corporation for which some taxable years have been adjusted, but it does not stipulate that this should be extended to include other foreign related parties that have not been adjusted

Taxpayer's (Claimant) Claims

- Considering the decisions of other Tax Tribunal ruling and the purpose of the newly established Article 4, Paragraph 1 of LCITA, it is reasonable to determine or adjust the tax base and amount of tax based on the same arm's length price for transactions and taxable years involving other parties to which the same method of calculating the arm's length price is applied, to ensure that the taxpayer's property rights are not unfairly infringed.
 - Therefore, if the tax authority's logic for taxation is applied to similar transfer pricing transactions, the tax authority should make the necessary reductions if a reduction adjustment is anticipated for the taxpayer. Moreover, even if the tax authority does not actively make such adjustments, if the taxpayer lawfully requests an adjustment based on Article 4-2 of the LCITA, the tax authority must make the adjustment.
 - Moreover, if the tax authority commences verification of the appropriateness of transfer prices, it is rational to view that it does not have discretion to choose based on tax advantages or disadvantages (Supreme Court Decision 2008Do1588, referenced on September 16, 2009).
- The operating losses recorded by the overseas sales subsidiaries are attributable to the transfer prices with the claimant, hence transactions of goods between the claimant

corporation and the overseas sales subsidiaries qualify as transactions subject to transfer price adjustments. The claimant recognized a high operating profit margin, whereas the overseas sales subsidiaries incurred operating losses.

Decision by Tax Tribunal

- It was found that ○○○ corporation and other overseas sales subsidiaries share similarities in their founding purposes, operational activities, handled goods, functions performed in transfer pricing transactions, risks assumed, and assets used.
- The claimant selected the transactional net margin method for determining the arm's length price (operating margin) as outlined in the TP Report each region and year. Considering these facts, the decision by the tax authority to reject the adjustment claim in this case is invalid under Article 4-2(3) of the LCITA.
- Therefore, the tax authority must re-evaluate the validity of the contents presented in the claimant's TP report and reasonably determine the adjustment in the tax base and tax amounts accordingly.



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

Vietnam Initiates Anti-Dumping Investigation

Vietnam has initiated an anti-dumping investigation on galvanized steel sheets from Korea and China. Korean steel companies, including POSCO, now face the possibility of tariffs again, approximately two years after the previous anti-dumping measures were terminated.

1) Background

The Vietnam Chamber of Commerce and Industry (VCCI) reported the investigation on June 7th. Last month, domestic companies submitted documents requesting the investigation, leading to the current evaluation and the Trade Remedies Authority under the Ministry of Industry and Trade began evaluating documents on June 6th, following requests from major Vietnamese steel companies.

2) Investigation Process

The authorities will investigate the damage caused by the import of galvanized steel sheets by targeting domestic companies and other stakeholders. They have asked domestic companies that produce or trade galvanized steel sheets to submit business information, production capacity and output of galvanized steel sheets from 2019 to 2023, the company's opinion on the matter, and any documents or evidence they deem relevant by the 20th. This will determine whether the imports pose a threat to the operation of domestic companies and the growth of related industries.

3) Previous Anti-Dumping Measures

Vietnam imposed anti-dumping duties on galvanized steel sheets from Korea and China from April 2017 to 2022. POSCO faced a 7.02% duty, other Korean companies faced 19%, and Chinese companies faced 3.17 ~ 38.34%.

4) Potential Impact

If anti-dumping duties are reinstated, Korean companies, including POSCO, will face tariffs again and this will increase the competitive pressure from local Vietnamese companies.

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