

Tax News Flash

- Transfer Pricing & Customs

December 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 preliminary inquiry in relation to transfer pricing

A domestic corporation and its oil storage tanks do not constitute a permanent establishment of a foreign corporation when the domestic corporation holding oil storage tanks in a bonded area enters a service contract with a foreign (Singaporean) company engaged in oil trading for the storage and simple blending of petroleum products, which are then fully exported overseas.

<Preliminary-2024-Legal Affairs-0560, November 18, 2024>

Background

- Company A is a domestic corporation operating oil storage tanks in a bonded area near Ulsan Port to provide services such as loading, unloading, storing, vaporizing, discharging, and re-shipping of petroleum products.
- Company A entered a storage contract (the "Contract") with a Singapore-based company engaged in oil trading (the "Foreign Corporation").

** The Foreign Corporation does not maintain an office, branch, place of business, workshop, factory, warehouse, or supervisory activity site in Korea. Its employees occasionally visit Korea for information gathering or goods inspection in a bonded area as part of their operations.*

- Under the Contract, the Foreign Corporation stores petroleum products purchased from domestic and foreign refiners in Company A's oil storage tanks in a bonded area (delivered via vessels chartered by the refiners).

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- At the Foreign Corporation's request, the stored petroleum products are blended and then exported overseas. The details of the Contract and transaction structure are as follows:
 - ① The Contract was signed between Company A and the Foreign Corporation outside of Korea.
 - ② Company A provides services such as storage, inflow/outflow, transfer between tanks, and blending at the Foreign Corporation's request, and Company A receives fees for the services in return.
 - ③ The blending ratios and types of related services are entirely determined by the Foreign Corporation, and Company A has no decision-making authority regarding the services.
 - ④ Company A also provides blending services to other foreign corporations at its own risk and cost.
 - ⑤ Contracts and payments for the sale of petroleum products occur outside of Korea.

Key point of the Inquiry

Whether a permanent establishment (PE) or deemed PE of the Singaporean company in Korea is constituted when:

A domestic corporation holding oil storage tanks in a bonded area enters a petroleum product storage contract with a Singaporean oil trading company and, pursuant to the contract, the Singaporean company stores and blends petroleum products purchased from domestic and foreign refiners and then fully exports them overseas.

Response to the Inquiry

If a Singaporean company engaged in international oil trading enters a storage contract with a domestic corporation (Company A) under which: Company A stores petroleum products purchased by the Singaporean company in its oil storage tanks in a bonded area; Company A provides simple blending services at the request of the Singaporean company; The petroleum products are then fully exported overseas;

The Singaporean company does not have disposal rights over the oil storage tanks and only pays fees for storage and blending related services, then Company A and its oil storage tanks do not constitute a permanent establishment of the Singaporean company under Article 5 of the Korea-Singapore Tax Treaty (Double Tax Agreement) and Article 94 of the Corporate Tax Act.



The following is key updates regarding the revised Harmonized System of Korea (HSK) effective from January 2025.

* The source is the reference material published by the Ministry of Economy and Finance regarding the upcoming implementation of the Harmonized System of Korea (HSK) in 2025.

Revised Harmonized System of Korea (HSK) to Take Effect from January 1, 2025 Background

The Harmonized System of Korea (HSK) is a 10-digit HS classification table tailored to Korea's needs, based on the six-digit HS codes established by the World Customs Organization (WCO). The HSK serves as the foundation for various policy implementations and trade statistics, and it is also used as a standard for export/import notifications, tariff binding, and determining simplified duty drawback amounts etc.

On 10th of December 2024, the Ministry of Economy and Finance issued a legislative notice for the partial amendment of the Enforcement Decree of the Act on Special Cases of the Customs Act for Implementation of Free Trade Agreements. Due to amendment, some digits and names in the Harmonized System of Korea (HSK) will be revised from January 1, 2025.

The primary reason for this revision is to align specific item numbers and names in the Schedule of Tariff Concessions, an annex to the Regulations on Tariff Concessions under WTO Agreements, with the updated item numbers and names in the HSK effective from January 1, 2025. This alignment aims to prevent confusion during customs clearance process

Details of Revision

1. Overview

The Ministry of Economy and Finance has revised the 2022 edition of the Harmonized System of Korea (HSK) and announced the 2025 edition, which will take effect on January 1, 2025. This revision introduces changes to certain item numbers and descriptions, establishing new standards for customs and statistical classifications.

The updated HSK aims to enhance alignment with the global HS framework while addressing the specific needs of Korea's domestic industries. Notably, new items have been added to support emerging technologies and industries, as well as to strengthen public safety and health. For example, new classifications include fuel cell systems, sorting robots, and toxic substances. As a result of these updates, the total number of items has increased from 11,293 to 11,326, reflecting an addition of 33 items.

Additionally, existing definitions have been clarified to reduce ambiguity and ensure consistency with international standards. These adjustments aim to harmonize customs processes with international trade and environmental regulations, ensuring smoother trade operations and sustainable practices. This comprehensive update reflects Korea's proactive approach to adapting to evolving global trade dynamics and regulatory demands.

2. The revisions can be categorized into the following sections: 1) Policy Support, 2) Public Safety, 3) Updates to Current Standards, and 4) Others. Key items and their expected effects are classified as follows.

1) Policy Support

Key Items	Remark	HS CODE
Fuel cell systems	Newly created	8501.62
Generators, motors, pumps		8504/8413
Water purification equipment		8543.30.1
Sorting and delivery robots		8428.90.2
Electric vehicle intermediate parts		3824

- The revised classifications under Policy Support facilitate supply chain management and statistical calculations while providing policy incentives such as reduced tariffs. They also support export companies through measures like the IRA, reflect trends in emerging markets and products, and incorporate industry feedback to enhance export competitiveness.

2) Public Safety

Key Items	Revised Content	HS CODE
Chemical-resistant coatings and materials	Newly created	0301.99
Capsaicin extracts and dietary supplements		0910/2103
Medical device sterilization substances		4402.90.2
Water filtration and urban safety products		8481.80.5
AI-based regulatory tools		9021.390

- The revisions strengthen the management and monitoring of critical resources, such as securing domestic supply chains. They also enhance citizen protection by restricting hazardous imports, improve safety standards for imported medical devices, and align with global environmental and safety agreements. These changes reflect a commitment to safeguarding public health and complying with international regulations.

3) Updates to Current Standards

Key Items	Revised Content	HS CODE
Packing materials	Scope clarified	2309.90
Plates and sheets	Modified	4418.00 → 4421.00
Ultrasound fish finders		9031.80 → 9014.80
Filaments for lamps		8101.96 → 8101.99
Orthopedic instruments		9021.90 → 9021.10

- The revisions align domestic laws, such as the Consumer Protection Act, with Harmonized System of Korea (HSK) terminology, ensuring consistency between domestic and international classifications. These changes reduce discrepancies in customs administration by standardizing tariff reporting with HSK standards. Additionally, they harmonize HSK classifications with international HS standards, addressing any inconsistencies in regulations and ensuring smoother customs procedures.

4) Others

Key Items	Revised Content	HS CODE
Radiation-enhanced cameras	Correcting terms	8525
OLED, LCD, and other display modules	Fixing Inconsistencies in the notation of Korean words with English	7005, 8529, 7219, 7220, 8421, etc.

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- The revisions ensure that terminology in tariff schedules is aligned with upper-level domestic laws, promoting consistency and clarity. Additionally, they address discrepancies in territorial notations during FTA and WTO negotiations, mitigating potential confusion and ensuring smoother international trade discussions.

Conclusion

Starting January 2025, certain HS code and descriptions will be revised based on Harmonized System of Korea (HSK), highlighting introducing new codes for key high-value industries like EV batteries, hydrogen energy, and public health-related products such as charcoal with additives and lead-prone faucets. It also enhances classification for climate and environmental protection by segmenting ozone-depleting substances and toxic pesticides.

The revision may lead to changes in the rules of origin, especially a Change in Tariff Classification (CTC), making it crucial to thoroughly review and prepare for these changes in advance. This proactive approach will help minimize potential disruptions in customs procedures and mitigate risks in international trade.

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