KPMG 安侯建業

e-Tax alert

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Ruling on one-time transfer pricing adjustments in Taiwan

MNEs often face unexpected market conditions causing the actual transaction result to deviate from targeted result of the TP policy. Hence, to achieve an arm's-length result, MNEs often face the need to make one-time TP adjustment.

To provide clear guidance for MNEs to conduct one-time TP adjustment, MOF announced ruling no. 10804629000 on November 15, 2019. Relevant highlights are as below:

Eligibility Criteria

Starting from 2020 fiscal year, company that conduct controlled transactions and make one-time TP adjustment prior to closing the accounts of that fiscal year, should meet the following criteria and pay the relevant tax and levies:

- Prior to conducting controlled transactions, the transacting parties should have a written agreement in place in terms of transaction terms and all factors affecting the transaction price. Furthermore, the relevant account receivables and payables resulted from the adjustment based on the agreement should also be booked in the accounts; and

- The counter parties involved in the controlled transaction should concurrently make a corresponding adjustment.

Applicable Transaction Types

Company that make one-time TP adjustment based on abovementioned criteria should pay relevant tax and levies based on the adjusted transaction price according to the following rules:

For tangible goods imported into Taiwan

To assist the Customs trace the imported goods that may be subject to TP adjustment, company should follow below compliance rules:

- Company intended to make TP adjustment should make a notation in the import declaration form, "Conduct one-time TP adjustment for xxx fiscal year" when import goods from offshore related party and attach proforma invoices and value declare forms based on provisional price to apply for post-importation change in the reported customs value. This procedure is to make deposit to the Customs based on the provisional price and reconcile when price is finalized, in accordance with Paragraph 3, Article 18 of the Customs Act.

- Afterwards, within one month after the end of the fiscal year, the company should submit an application and relevant documents to the Customs. This is to request the Customs to assess the dutiable value in accordance with the Customs Act, so the company could pay or ask for refund of the relevant duties, taxes and fees collected by the

Customs. The application and documents should contain the following information:

- The number, items, provisional prices of import declaration forms that requesting the Customs to assess dutiable value, and the price of official commercial invoices;
- Reasons or methodologies for determining the transaction price; and
- Agreement of the transaction, official commercial invoices, payment slip and other relevant documents.

- For imported goods that applied "post-release duty payment" by making deposit, the Customs will issue "Proof of duty paid and remittance application". Any Value Added Tax (VAT) refund assessed by the Customs should be treated as a subtraction of input VAT. The correspondent VAT reporting procedure should follow the Tax Ruling No.0910456851 published on January 10, 2003 and Tax Ruling No.10104557440 published on May 24, 2012, which is the company should treat the refund on import VAT as subtraction of input VAT and report on the current period VAT return when the assessment of refund is approved by Customs.

For other types of transactions

In regards to transactions other than imported goods, company should follow below compliance rules:

VAT:

- When filing the VAT return for the last reporting period of the fiscal year, the company should attach the following documents:
  - ➢ One-time TP adjustment declaration and other relevant supporting documents;
  - ➢ Sales amount for the last reporting period of the fiscal year; and
  - ➢ Corresponding payable or excess VAT amounts, to file VAT return to governing tax authority.
- Except for cases relating to purchase of offshore services, export of goods or services, Government Uniform Invoice (GUI) should be issued for the additional sales amount resulting from increased transaction price. In case it is a reduction of transaction price, such reduction should be treated as sales discount and noted as one-time TP adjustment on the GUI or credit note.

Commodity tax:

- When filing commodity tax return for goods released from factories in the last month of the fiscal year to governing tax authority, the company should attach the following documents:
  - ➢ One-time TP adjustment declaration and other relevant supporting documents; and
  - ➢ Payable commodity tax amount.

Income tax:

- For adjustments made to non-tangible goods, if such adjustments of transaction price would be subject to withholding tax, the withholding tax payment or refund should be made in accordance with relevant income tax regulations.

Documents to be provided with Income Tax Return

When the company files income tax return, it should disclose relevant information of the controlled transaction, and provide the following to the governing tax authority:

- A copy of the relevant agreement;
- Supporting documents to prove corresponding adjustment has been made by counterparty; and
- Supporting documents for relevant tax adjustment made

The company should also explain the reasons for such price adjustment and actual adjusted result.

Other Remarks

- If the company follow aforementioned rule and apply for post-importation change in the reported customs value, and fail to submit application and relevant documents to the Customs within one month after the end of the fiscal year, the Customs will assess the dutiable value based on its sole discretion.

- Companies conducting controlled transaction should follow arm's-length principle when setting price or profitability. For the company that make one-time TP adjustment, when filing income tax return, company should comply with the regulations set forth by Article 43-1 of the Income Tax Act and Taiwan TP Assessment Rules.

KPMG Observations

- Comparing to the difficulties in applying for one-time TP adjustment in the past, this ruling allows MNEs to make appropriate TP adjustment prior to the end of fiscal year. However, to qualify for making TP adjustment, a company has to make sure various compliance requirements are met in different phases of transaction:

- **When Planning TP Policy**: A company needs to set up TP policies that reflect factors which may affect transaction price, situations where TP adjustments should be made, and the mechanisms of how TP adjustments would be made. Such policy should be stated in an agreement.

- **When Executing Transactions**: We suggest companies to closely monitor their operational TP. If a company would like to make a one-time TP adjustment, it needs to meet the compliance requirements from Customs, withholding tax and VAT, commodity tax perspectives depending on the nature of transactions. Especially for importation of goods, there are stringent compliance requirements from Customs and VAT perspectives.

- **When Filing Income Tax Return**: For a company which makes one-time TP adjustment, it has to provide the relevant agreements, supporting documents, reasons for TP adjustment and actual adjusted results to tax authority.

- It is expected that Customs authority and tax authority will issue detailed guidelines for companies to follow when conducting one-time TP adjustments.

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