



TaxNewsFlash - Transfer Pricing

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Transfer Pricing Newsletter

Samjong KPMG TAX 6 provides readers Transfer Pricing related recent local tax issues and trends.

This newsletter is a monthly publication of Samjong KPMG TAX 6. If you need more detailed explanation, please feel free to contact key contacts or Tai-Joon Kim for transfer pricing matters.

[The followings are recent Korea's Tax rulings and cases in relation to transfer pricing](#)

1. Late payment interest for the delayed collection of trade receivables

1) Details of the Appeal to the Tax Tribunal

For the delayed collection of trade receivables from an overseas affiliated company during the 2015-2017 financial year, the Korean taxpayer filed a corporate tax return by applying the 3-month maturity LIBOR as arm's length interest rate for tax purposes.

The in-field tax auditors considered that the 3-month maturity LIBOR does not correspond to the arm's length price (interest rate) prescribed by the Adjustment for International Taxes Act (i.e., The version before amended to Act No. 14384 on Dec. 10, 2016,). The in-field tax auditors notified to make transfer pricing adjustments in the following manner: for 2015 to 2016 financial year, to adjust by the weighted average borrowing rate of the taxpayer, and for 2017 financial year, to adjust by the safe harbor interest rate, which is 4.6% according to Article 43, Paragraph 2 of the Enforcement Rule of The Corporate Tax Act as the arm's length price (interest rate).

2) Tax Tribunal Decision

The definition regarding arm's length interest rate was prescribed in Article 6 of the Enforcement Decree of the Adjustment of International Taxes Act. It prescribes that the arm's length interest rate is an interest

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rate of loan transactions that is applied or will be applied in ordinary transactions between non-related parties.

Since the Article 2 of 2 of the Enforcement Rule of the International Taxes Act stipulates that the interest rate of overdrawn account (safe harbor rate) is the arm's length price, the tax audit team's assessment based on the company's weighted average borrowing rate for FY2015 and 2016 and based on the interest rate of overdrawn account (safe harbor rate) for FY2017 is judged to be not erroneous.

2. National Tax Tribunal, "Use of 'APA' application information for the basis for transfer pricing assessment is illegal"

1) Details of the Appeal to the Tax Tribunal

The APA is an agreement made between a taxpayer and a tax authority on an appropriate transfer pricing methodology and an arm's length price to be applied to the taxpayer's future intercompany transactions with its foreign related parties.

A taxpayer based in Korea, and its overseas subsidiary filed the APA application to the Korean National Tax Service and the tax authority of the country where the overseas subsidiary has been located. Both tax authorities have been in the process of negotiations for conclusion of the APA. However, while conducting a tax audit on the taxpayer, the Korean in-field tax auditors made transfer pricing adjustments based on the APA application information obtained from the taxpayer.

2) Tax Tribunal Decision

According to the National Tax Tribunal, the fact that the National Tax Service made an assessment based on the APA application information during the tax investigation violates the Enforcement Decree of the National Tax Act, which states that the APA application data cannot be used as a basis for the assessment. In addition, it was judged that the assessment using the APA application information violated the 'principle of good faith'.

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