

# Tax News Flash

## - Transfer Pricing

December 2022

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 followings are recent Korea's Tax rulings and cases in relation to transfer pricing**

**Document No. : 2021 Bu 2624(2022.08.09)**

**Decision : Dismissal**

**Non-acceptance of the claims of the taxpayer at The Tax Tribunal in Korea**

### **Background**

- 1) The taxpayer was established on July 21, 1998, AAA corporation OOO owns 100% of the taxpayer's shares and manufactures and sells bearings and accessories since its establishment.
- 2) After conducting a tax audit on the taxpayer from January 21, 2020, to July 16, 2020, the tax auditor, under the Article 4 (1) of the Legislation for Coordination of International Tax Affairs Act ("LCITA"), assessed a taxation by the inclusion in income during the 2015~2017 business year, claiming that the taxpayer sold the bearing products with the OOO trademark attached at a price below the arm's length price to related parties such as BBB OOO corporation, CCC OOO corporation, DDD OOO corporation, and AAA OOO corporation and the four corporations above. The tax authority, accordingly, adjusted the transfer price and reassessed the corporate tax of OOO KRW for the 2015 business year, OOO KRW for the 2016 business year, and OOO KRW for the 2017 business year.
- 3) The taxpayer objected to the assessment and filed a request for adjudication to The Tax Tribunal on October 30, 2020.

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4) The taxpayer filed a tax refund request to the Korean tax authorities for reassessment that the corporate tax for the 2015 business year OOO KRW should be refunded since the sales deduction amount OOO KRW has occurred because of the “agreement on the unit price change” with the OOO, an overseas related party. However, the tax authorities rejected the claim for reassessment on January 15, 2021.

### **The Tax Tribunal Decision**

If the tax authorities with their best efforts selected comparable companies under similar transaction conditions and calculated a reasonable arm's length price based on all the available data obtained from the taxpayers, it would be reasonable to reach a conclusion that the analysis result can lead to the arm's length range although the tax authorities had not appropriately adjusted for the differences in transaction items or distribution channels between the taxpayers and the comparable companies (refer to the Supreme Court October 13, 2011 ruling, 2009 Doo24122).

The taxpayer argued that the reassessment of the tax authorities, based on the arm's length price calculated using the taxpayer as the tested party is unlawful.

However, considering that the taxpayer did not submit the requested financial data at the time of the tax audit even when the taxpayer was asked for the financial reports of the foreign related parties, the tax authority had no choice but to calculate the arm's length price by using the taxpayer as the tested party for analysis, and a third-party local comparables. Moreover, considering that the local comparables are comparable to the taxpayers, the arguments of the taxpayer are hard to be accepted.

In addition, the taxpayer argued that even if the arm's length price calculated by the tax authorities is deemed legitimate, the reassessment for arbitrarily selected related party transactions that are only subject to TP adjustment is unlawful since it contradicts the Article 4 (1) of the LCITA.

However, the provision to Article 4 (1) of the LCITA applies to determining or correcting the tax amount by calculating the arm's length price for two or more tax years, and therefore, it cannot be necessarily interpreted that the arm's length price must be calculated for transactions with all foreign related parties in the same business sector to determine or correct the tax base and tax amount. Therefore, the arguments of the taxpayer are difficult to be accepted.



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