



# Tax News Flash

## - Transfer Pricing

January 2023

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

**The Tax Tribunal rejected the taxpayer's argument that the license fees for the use of the patents unregistered in Korea is not the domestic source of income, and thus, it is not subject to withholding tax in Korea**

< Decision 2022 Joong 7160 (2022.12.13)>

### Background

- On May 8, 2017, the taxpayer, that filed a tax appeal to the tax tribunal, signed a License Agreement with AAA Co., LTD for the 359 patents secured and managed by the taxpayer at the contracting date.
- When AAA paid KRW 000 as the license fee to the taxpayer for the use of patent rights for 2017, the company considered it as domestic source income, and withheld corporate tax of KRW 000, in accordance with Article 14, Clause 1 of the Korea-US Tax Treaty.
- The taxpayer claimed that 353 patents among 359 patents are not registered in Korea, hence the royalty payments for the use of the unregistered patents in Korea does not correspond to domestic source income.

On February 25, 2022, a taxpayer filed amended tax return for reassessment to refund the corporate(withholding) tax for the 2017 financial year, and on June 24, 2022, the Korea's National Tax Service ("NTS") rejected the taxpayer's request, determining that the disputed royalties correspond to the domestic source income.

- The taxpayer appealed to tax tribunal on July 26, 2022.

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## The Tax Tribunal Decision

The Korea-US tax treaty Article 6 “Source of Income” Clause 3 states that “Royalties shall be treated as income from sources within one of the Contracting States only if paid for the use of, or the right to use, such property within that Contracting State”. Under the Korea-US tax treaty, it is regulated that the source of income shall be determined by the place of use, but the criteria to clarify the place of use is not provided. Therefore, it is reasonable to determine whether it is domestic source of income based on domestic tax laws as the tax treaty does not provide the specific criteria.

In Corporate Tax Act Article 93, Clause 8, amended before 2017.12.19, states that “If the relevant patent right, etc. has been registered overseas and is used in manufacturing or sales in Korea, it is deemed to have been used in Korea regardless of whether it was registered in Korea or not”.

Due to these reasons described above, it is reasonable to view the royalty paid for the use of patents unregistered in Korea as the domestic source income. Therefore, it is our understanding that the NTS has not made an erroneous decision for rejecting the taxpayer’s request.



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