



# Tax News Flash

## - Customs

April 2023

Samjong KPMG provides readers Customs related recent local issues and trends. This newsletter is a monthly publication of Samjong KPMG. If you need more detailed explanation, please feel free to contact Key contacts.



The following is a recent Customs-related Tribunal case in Korea

**1. Whether there is a justifiable reason for exempting the penalty in a case where the claimant filed an amendment by adding the amount paid to its affiliates as a post-compensating adjustment to the customs value, according to its transfer pricing policy, after completing the initial import declaration (Dismissed) [Tax Tribunal, 2022-Customs-0031, February 2, 2023]**

### 1) Facts

The claimant is a foreign-invested enterprise, 100% owned by its affiliate. It compares the target operating margin rate (OM%) with the actual OM%, calculates the amount that is above or under the target OM%, and remits or receives a post-compensating adjustment annually to its affiliates.

In 2015, Korean Customs conducted a customs audit on the claimant and confirmed that the amount paid by the claimant as a post-compensating adjustment should be included in the customs value of the imported goods as subsequent proceeds, which is one of the additional elements of the customs value. The claimant added the remittance amount to the customs value and filed an amendment accordingly.

In 2021, the claimant remitted the compensating adjustment amount (hereinafter referred to as the “amount at issue”) regarding the imports of 2020 to its affiliates. The claimant requested a penalty exemption before filing an amendment report and adding the amount at issue to the customs value.

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## 2) Issue

- Whether there is a justifiable reason for exempting penalty for the case where the claimant filed an amendment by adding to the customs value the amount paid to its affiliates as a post-compensating adjustment according to its transfer pricing policy after completing the initial import declaration

## 3) Decision

Considering the following points, it is difficult to accept the request for penalty exemption of the claimant, and therefore, it is judged that there is no fault in the disposition of the customs authority.

- The claimant argues that there was a justifiable reason that could not be regarded as negligence in the tax obligation, considering that it made a considerable effort to fulfill its tax obligations by filing amendments regarding the post-compensating adjustment and paid taxes. However, the fact that the claimant was unable to report an exact customs value with a determined adjustment amount at the time of import declaration was only due to the internal circumstances of the claimant regarding the transfer pricing policy.
- In addition, the fact that the claimant was unable to apply for a provisional value declaration because it did not receive ACVA\* approval was also due to internal circumstances in which the claimant could not receive detailed data from its headquarters.

*\* ACVA (Advanced Customs Valuation Arrangement) refers to an advance agreement between a taxpayer and the customs authority, at the request of the taxpayer, on customs valuation of imports traded between related parties, i.e., an overseas parent company and its domestic subsidiary.*

- In 2017, the Korea Customs Service implemented a guideline on the price reporting procedure and operation plan for post-compensating adjustment between headquarters and branch offices, and in 2019 established criteria for whether the adjustment amount should be included in the customs value.
- It is difficult to judge that the claimant had a justifiable reason for the underpayment just because it voluntarily filed an amendment in response to the information provided by the Customs.

## 4) KPMG's comment

It's important to note that a provisional value declaration is only allowed in limited circumstances. If a compensating adjustment is not subject to a price adjustment clause or if the company lacks APA or ACVA approval, penalties may apply. To avoid penalties, companies should consider applying for the ACVA program to determine whether the remitted

amount to affiliates is related to the customs value. If it is added to the customs value, companies can obtain a penalty waiver by using the provisional value declaration under ACVA. It's worth mentioning that the Korea Customs Service strictly applies penalty exemption requirements.



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