

# Tax News Flash

## - Transfer Pricing

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Samjong KPMG Transfer Pricing & Customs Service Group provides readers with Transfer Pricing 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

### **Company A vs. NTS: Determination of VAT Liability for Sales Support Services** **<Tax Tribunal Decision 2018Goohab60053, 2018.11.15>**

#### **Background**

- Company A (hereinafter, Company A or taxpayer) is a wholly-owned subsidiary of HQ located in Germany and performs automobile parts engineering service and wholesale of electric tools. Beginning 1989, Company A provided various marketing and sales management service including research of local customers, local market trends, and customer preferences.
- Beginning 2012, in accordance with a request made by the local customer, the HQ granted the rights to Company A to negotiate and contract agreements on behalf of the HQ under the sales support service agreement. Accordingly, the HQ registered a permanent establishment (hereinafter, PE) in Korea.
- Company A filed zero-tax rate for the service fee remunerated by the HQ for the sales support services. However, the National Tax Service (hereinafter, NTS) deemed that the actual service recipient is not the HQ but rather the HQ's PE registered in Korea (hereinafter, Korean PE) and accordingly, the service fee is not subject to zero-tax rate of value added tax (hereinafter, VAT).

#### **Tax Office's (Defendant) Claims**

- The Tax Office claimed that Company A contracted with the Korean PE and accordingly provided sales support services to the Korean PE. The Tax Office notified the taxpayer of the correction to apply a VAT rate of 10% for the sales support service fee as the taxpayer's counterparty to that received service provision is subject to a domestic PE of the HQ rather than the HQ.

#### **Taxpayer's (Plaintiff) Claims**

- Although the agreement was in form contracted between the taxpayer and the Korean PE, the taxpayer claimed that in substance the agreement was contracted between Company A and the HQ located in Germany. Although the HQ was 'deemed' to have a

PE in Korea through the grant of rights to Company A in accordance with local corporate income tax regulation, it did not have physical presence in Korea. Accordingly, the taxpayer claimed that Company A provided services to the HQ rather than the Korean PE and the levy of value added tax should be cancelled.

### Tax Tribunal Decision

- The Tax Tribunal cancelled the levy of VAT in consideration of the below factors.
- Although the agreement was contracted with the Korean PE, in consideration of the contents of the agreement such as the rights, responsibilities, and sales generated are attributed to the HQ, the actual agreement is between Company A and the HQ.
- In consideration of the above that the agreement was contracted between Company A and the HQ, the actual transaction is performed between Company A and the HQ to which the HQ received services rather than the Korean PE.
- In accordance with Korean VAT regulation, business support services are subject to zero-tax rate. In consideration that Company A performs sales support services which are supplementary for the purposes of the efficiency in HQ's business operation in Korea, the sales support services could be categorized as business support services.

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