



# Tax News Flash

## - Customs

October 2022

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 followings are recent Korea's Supreme Court Decision in relation to Customs

### 1. Whether the TP adjustment should be added to the customs value of imported goods

#### 1) Background of the Decision

The plaintiff is a local corporation in Korea established with 100% investment by Swedish corporation B ("headquarter") and sells automobiles and related parts to domestic dealers. The plaintiff declared the transfer price of imported goods as customs value in FY2009 and FY2010, then amended the customs value by adding the TP adjustment amount on March 31, 2010, and July 12, 2011, to the Head of Suwon Customs House and paid the corresponding customs duties, etc.

After that, the plaintiff reported that the TP adjustment amount above should be refunded on the grounds that it was an adjustment of income, which should be not included in the customs value as the price actually paid or payable. The head of the Suwon Customs House refunded the full amount of duties in relation to the TP adjustment for the FY2009 and FY2010 from December 1, 2011, to June 20, 2012, as an overpayment. However, from FY2011 to FY2014, the plaintiff declared the transfer price as the customs value of imported goods and did **not** report the TP adjustment amount as the adjustment to the customs value.

#### 2) Issue

Whether the TP adjustment should be added to the customs value as the adjustment

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### 3) Supreme Court Decision

When the level of profit realized during the taxable period deviates from the level of the arm's length price, the TP adjustment is made for the purpose of convergence to the arm's length price level. Whether this TP adjustment is included in the customs value as a proceed of a subsequent resale of imported goods should be judged according to the actual cause and nature of the TP adjustment.

Proceeds of a subsequent resale of imported goods are the amount that accrues directly or indirectly to the seller. Accordingly, even if the amount remitted by the importer to the exporter falls under the above definition, the amount received from the exporter cannot correspond to this. As a result, even though TP adjustments caused by the same pricing policy have the same substance, whether or not they are included in the customs value according to the Customs Act is treated differently depending on whether they are paid or received, which may lead to a risk of violating the principle of equity in taxation.

The Customs House (defendant) argued that the TP adjustment has the nature of consideration for imported goods considering that the TP adjustment amount is specified as an "additional purchase price" in the supply contract and used "pre-remittance for imported goods" codes when remitting the TP adjustment amount through the bank. However, under the Framework Act on National Taxes, the provisions regarding the computation of tax base shall be applied according to the substance of a transaction regardless of the name or form (Refer to Supreme Court Decision 2015du5209, 2016. 8. 30.)

Further, only the amount that can be directly related to individual imported goods and calculated on the basis of objective and quantifiable data is added to the customs value. However, the TP adjustment at issue is the result of a combination of various factors other than the increase or decrease in sales volume. Nevertheless, the defendant judged that the TP adjustment at issue should be added to the customs value by allocating the total amount to each imported case, on the premise that the TP adjustment at issue was solely due to an increase in sales volume. Therefore, the defendant's decision against the TP adjustment at issue is not valid because it cannot be considered that only the part directly related to imported goods among the TP adjustment at issue is added to the customs value.

### 4) Conclusion

TP adjustments shall be added to the customs value of imported goods only when it is directly related to the imported goods and can be calculated on the basis of objective and quantifiable data.



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