



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

A decision on whether the fee paid by the taxpayer to the overseas parent company is subject to royalty income.

<Tax Tribunal Decision 2021Suh5598, 2023.08.09>

Background

- The taxpayer provides a service to distribute contents in Korea, then pays a Distribution Fee to the overseas parent company (hereinafter, 'HQ'). The Distribution Fee is in accordance with the subscription fee paid by the local subscribers. Accordingly, the taxpayer deemed the Distribution Fee as a business revenue of HQ and did not pay withholding tax for the Distribution Fees.
- The Tax Office claims that the taxpayer received a license for a right to use the copyright regarding video contents provided by the HQ. Accordingly, the fee paid by the taxpayer to the HQ is a royalty for copyright and would be subject to withholding tax.

Taxpayer's (Plaintiff) Claims

- The taxpayer claims that it contracted with the HQ for the purposes of service provision and was not licensed to use any copyright. The taxpayer was established for the purposes of non-exclusive distribution of membership in Korea. Accordingly, the taxpayer paid a fee to the HQ after the taxpayer recorded an arm's length profit margin for the resale of membership in Korea in its book.
- The taxpayer performed functions such as marketing and promotion that is necessary for the resale of membership. However, the taxpayer does not operate any department or personnel that would perform tasks relating to the distribution of contents.

Tax Office's (Defendant) Claims

- Although the taxpayer claims to be a limited risk distributor, the Tax Office claims the taxpayer to be the main entity to perform services considering that the taxpayer directly contracts with the subscribers, allows access to the HQ's contents, recipient of subscription fee, and performs maintenance for the website.
- Moreover, the taxpayer has been licensed the right to use copyright for HQ's contents to provide services to local subscribers. In order to provide streaming services for contents, the taxpayer can be deemed to have the right to transmit and reproduce such contents.

Tax Tribunal Decision

- In accordance with the agreement between the taxpayer and the HQ, the taxpayer claims to distribute contents in the local market without the license which gives the right to use copyright. However, in consideration of the way in which the taxpayer provides services, the right to reproduce, transmit, and distribute is essentially licensed to the taxpayer. Accordingly, the Tax Tribunal ruled that the fee paid by the taxpayer to the HQ is a royalty payment and is subject to withholding tax.

Key Contacts

Samjong KPMG Transfer Pricing & Customs Service Group



Gil-Won Kang
Head of TAX 6
T. +82-2-2112-0907



Seung-Mok Baek
TP Partner
T. +82-2-2112-0982



Sang-Hoon Kim
TP Partner
T. +82-2-2112-7939



Tai-Joon Kim
TP Partner
T. +82-2-2112-0696



Yong-Jun Yoon
TP Partner
T. +82-2-2112-0277



Tae-Joo Kim
Customs Partner
T. +82-2-2112-7448



Young-Bin Oh
Customs Partner
T. +82-2-2112-0435



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27th Floor, Gangnam Finance Center, 152, Teheran-ro, Gangnam-gu, Seoul, Korea

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