Customs – Tax Cooperation in Korea

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The industry has long requested the harmonization of Customs valuation (KCS) and transfer pricing (NTS). Inefficiency driven by different sources of information: duplicative document demand, delinquency management, off-shore tax evasion prevention, foreign exchange investigation. Harmonization of Customs Valuation and Transfer pricing to promote the stability of enterprise operation. Joint usage of data from both KCS and NTS to effectively prevent the evasion of customs duty and domestic tax.
II. Harmonization in Customs Valuation

Basis of Harmonization: Advance Customs Valuation Arrangement (ACVA)

Scheme

- Applicants: Duty payer who imports goods from related parties
- Time of application: Prior to importation of the goods
- Validity period: 3 years after issuance of ACVA certificate
- Benefits: Suspension of PCA, Exemption from penalties
### Comparison of ACVA and APA (Advance Pricing Arrangement)

<table>
<thead>
<tr>
<th></th>
<th>ACVA</th>
<th>APA</th>
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<tbody>
<tr>
<td><strong>Legal grounds</strong></td>
<td>- WTO Valuation agreement</td>
<td>- OECD Guideline</td>
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<td>- KCA art 37</td>
<td>- Adjustment of International Taxes Act. Art 6</td>
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<td><strong>Procedure</strong></td>
<td>- Mostly similar (Advance consultation, Application, Document checking, Notification of results, duty of yearly report, duty of confidentiality, etc)</td>
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<td><strong>Subject of Application</strong></td>
<td>- Import declaration by year or item</td>
<td>- Transactions of taxable period(yearly)</td>
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<tr>
<td><strong>Validity Period</strong></td>
<td>- Maximum 3 years</td>
<td>- Maximum of 5 years retroactively applied</td>
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<td><strong>Time for Application</strong></td>
<td>- Prior to import declaration</td>
<td>- Not later than the end of the first taxable year</td>
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II. Harmonization in Customs valuation

1. Pre-adjustment between duties and taxes

Concept

- Targets: Goods applied similar methods to determine Customs value and arm’s length price
  - (C.V) Second ~ Fifth value method
  - (Arm’s Length) CUP, Resale Price, Cost Plus method

- Above methods are no longer restrictively used and all goods has been subject to pre-adjustment scheme since Feb 2018
- Most TP policies are based on TNMM method and studies are further needed to harmonize C.V and arm’s length price
II. Harmonization in Customs valuation

② Post duty-tax harmonization scheme

Concept

- Importers can file an amendment after tax adjustment by tax authorities if there is:
  a. Value gap of imported goods between Customs and tax after adjustment by tax authorities
  b. Value gap of imported goods between Customs and tax by APA approval subject to retroactive application

- However, the method of adjustment should be in compliance with Customs valuation principle
II. Harmonization in Customs valuation

3 Provisional value declaration for ACVA and APA

**Concept**
- Importers who obtained approval of ACVA or APA can file provisional declarations on compensating adjustment

**Benefit**
- Additional duty collection is generally subject to penalties and other administrative punishment, but provisional value declaration is an exception
- These provisional declarations are expected to increase
III. Data exchange between KCS & NTC

Data exchange for Customs audit and investigation

For Customs/tax audit

- NTS → KCS (18) : purchase/sales amount, state of business...
- KCS → NTS (13) : import/export data, declared Customs value...
- Outcomes : additionally collected USD 13 mil. in 2017

For Investigation

- Exchange based on investigation cases [2013~2018.8]
  - NTS → KCS (259) for foreign exchange investigation
  - KCS → NTS (289) for offshore tax evasion
- Outcomes : KCS seized USD 268 mil. of foreign currency remittance without legal declaration process in 2017
III. Data exchange between KCS & NTC

② Data Exchange for collection of overdue duties

Periodical data exchange

- NTC → KCS (7 kinds of data)
  
  tax drawback, VAT declaration, stock possession...

- The data has not been fully used because majority of delinquents do not run normal businesses
IV. Confiscation for collecting overdue tax

Entrust of collecting overdue taxes

- NTC entrusts KCS to collecting overdue taxes
- Delinquents on the list open to the public
  - overdue tax amount over KRW 300 mil. (USD 0.27 mil.)

Confiscation

- Confiscate imported goods of delinquents
  - hand-carry, express mail goods and normal importation
- Put up confiscated goods for Public sale if delinquents do not pay overdue taxes even after confiscation
- 64 cases confiscated and national tax covered
V. Assessment and way forward

Assessment
- Best practices in ‘Guide to Customs Valuation and Transfer Pricing’
- Considerable difficulties: different criteria for evaluating Customs value and arm’s length price
- Exchanged data is not enough for better audit & investigation

Way forward
- Improve cooperative dialogue on advance/post harmonization scheme
- Improve data quality through sharing success/failure cases
Thank you