

# Understanding Korea's advance customs valuation arrangement and refund claim regimes

*Jeong Cheol Cho*

## Abstract

The Korea Customs Service (KCS) has introduced a unique customs system known as the Advance Customs Valuation Arrangement (ACVA). The ACVA refers to a system for an advance agreement on the method of determining the customs value of imported goods traded between related parties, such as an overseas parent company and its subsidiary in Korea. Such agreement is made between a taxpayer and the customs authorities at the request of the taxpayer. Under the ACVA, the customs authorities postpone or waive post-clearance audits of customs value of imported goods during the term of the agreement, and the taxpayer is obliged to report on a regular basis as to whether the terms and conditions of the ACVA have been fully complied with. The ACVA is analogous to an advance pricing arrangement (APA) under the Organisation for Economic Co-operation and Development's (OECD) guidelines for international tax.

In addition, the Korean Government amended the Customs Act and the Adjustment of International Taxes Act, which established and implemented the system that provides for a review of a tax assessment following an adjustment of the value of imported goods by one of the tax authorities, either the KCS or National Tax Service, relating to an international transaction between related parties.

## 1. Advance customs valuation arrangement

Article 37 of the Customs Act provides for the 'Advance Examination of Determining the Method of Customs Value', under which a taxpayer may request the head of a customs office to audit the method of determining customs value before declaring the value. Such a request may be made if the taxpayer has any questions about additions, deductions, factors associated with excluding the use of the transaction values, or method of determining the customs value for goods traded between the related parties. If a taxpayer declares the value based on the audit result, the head of the customs office has an obligation to accept the customs value. This 'Advance Examination of Determining the Method of Customs Value between Related Parties' is, in practice, called the 'Advance Customs Valuation Arrangement' (ACVA). In essence, the ACVA is a system to reach agreement in advance on the method of determining the customs value of imported goods traded between related parties, such as an overseas parent company and its subsidiary in Korea. This is achieved through mutual agreement between a taxpayer and the customs authorities upon the taxpayer's request therefor. Under the ACVA, Customs postpones or waives the post-clearance audits of the customs value of imported goods during the term of agreement, and the taxpayer is obliged to report on a periodic basis whether the terms and conditions of the ACVA have been complied with. In relation to national tax, the tax authorities accept the Advance Pricing Arrangement

(APA), under Organisation for Economic Co-operation and Development (OECD) guidelines, and Article 6 of the Adjustment of International Taxes Act provides for the ‘advance approval, for arm’s length price computation method’. Therefore, it can be said that the ACVA for the duty is similar to the APA for domestic tax.

Although international organisations such as the World Customs Organization (WCO) and the OECD have discussed the method for harmonising the customs value and the transfer price for ten years or more, no significant progress has been made. In this context, the ACVA is of significance since the Korean Government has established a specific system for identifying acceptable methods of determining the customs value of transfers among affiliates of multinational companies.

If agreement is successfully reached between a taxpayer and the Commissioner of Korea Customs Service (KCS) (upon the taxpayer’s request for the ACVA to the head of customs office), the head of the customs office will have a legal obligation to determine the customs value based on the agreed method of determination. As a result, Customs is able to assist companies to proactively declare the value through the ACVA, and to secure the associated tax revenue in a transparent manner without dispute, and the taxpayer may conduct their business with greater commercial predictability.

The specific advantages that taxpayers may obtain by using the ACVA are as follows. First, any customs audit may be postponed from the time they request the ACVA to the time the approval is obtained, and they may be exempted from customs audit of the customs value of approved items for a period of three years. Second, since they may use the provisional value declaration system from the time they request the ACVA, they may be exempted from any penalties, including part of any penalties relating to goods imported prior to the request for the ACVA. Third, as consumers and the taxation authorities can rely on the imported value of the goods, the company’s social reliability may be enhanced, which helps the company achieve commercial stability.

The ACVA was introduced and implemented in 2008. Although there were not many requests in the early days, requests have been gradually on the rise since 2013. Meanwhile, since 2015, when taxpayers have sought an ACVA from the Commissioner of the KCS, they have also been able to concurrently request a Unilateral APA for domestic tax purposes. The ability to request an ACVA and Unilateral APA concurrently has increased the worth of the ACVA, as the customs value and the arm’s length price for national tax purposes may be adjusted through discussion between the Commissioner of the KCS and the Commissioner of the National Tax Service (NTS). The Korean customs authorities aim to further develop and utilise the ACVA in the future.

## **2. Claim for rectification due to adjustment of customs value of imported goods**

When the Korean Government amended the Customs Act and the Adjustment of International Taxes Act in December 2011, it established and implemented a system to allow a taxpayer, who is subject to taxation imposition from either Customs or the NTS related to an adjustment to the value of goods imported from related parties, to file a claim for rectification to their other taxation authority. In other words, if Customs impose additional duty by increasing the customs value of goods traded between the related parties, the taxpayer may file a claim for rectification of corporate tax to the domestic taxation authorities. Similarly, if the domestic taxation authorities impose corporate tax by reducing the value of goods traded between related parties, the taxpayer may file a claim for rectification of customs duty to the customs authorities.

The method and procedure of filing a claim for rectification are similar to those applying to general customs and corporate tax matters. If the KCS or the NTS does not accept the claim for rectification, the

taxpayer may file a request for an adjustment between the arm's length price of the national tax and the customs value to the Minister of Strategy and Finance (MOSF), which is a higher authority. If a taxpayer suffers due to a difference of opinion between the taxation authorities, the MOSF may become involved in determining an adjustment (see Figures 1 and 2).

Figure 1: Claim for rectification of corporate tax related to an increase in customs duty (Article 10-2 of the Adjustment of International Taxes Act)

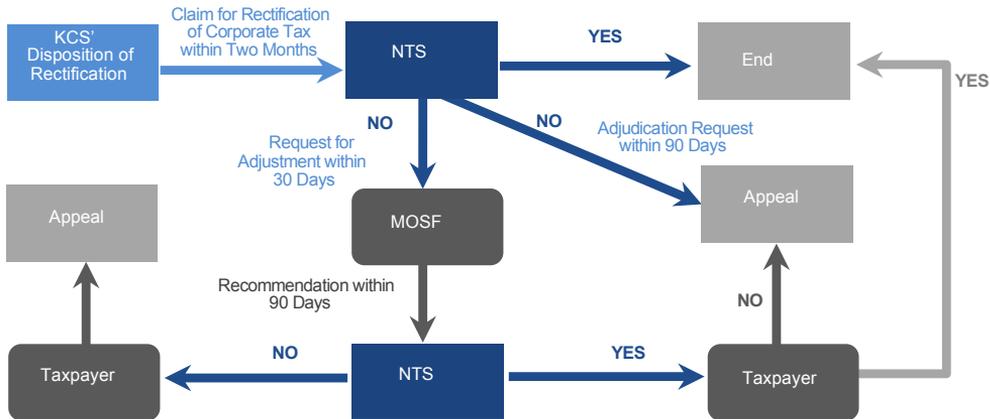
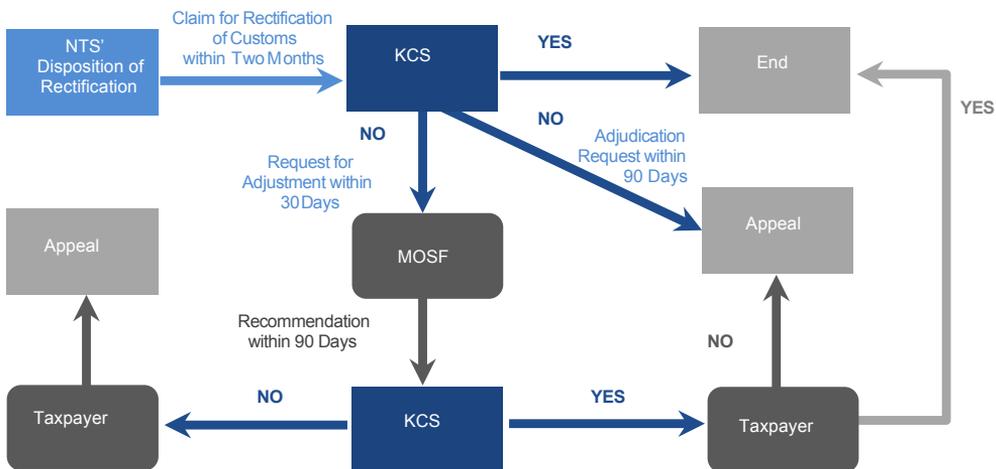


Figure 2: Claim for customs duties related to an increase in corporate tax (Article 38-4 of the Customs Act)



### 3. Other issues

If multinational companies that have entered the Korean market utilise the ACVA and claim for rectification arrangements, discussed above, they may effectively reduce the risk of ‘denial of transaction value between the related parties’. There are other methods to reduce such a risk. These include the conduct of expert audits relating to customs valuation, and transfer pricing studies by TP experts. In the latter case, it would be advisable to include customs experts in the TP study to ensure that the study focuses on both domestic and customs risks.

#### Jeong Cheol Cho



Jeong Cheol Cho is a partner at Yulchon LLC, practising primarily in the litigation area. Before joining Yulchon, he served as a superintendent public prosecutor at Seoul Central District Prosecutor’s Office, Suwon District Prosecutor’s Office and Daejeon District Prosecutor’s Office, and other offices. Mr Cho also has 19 years’ experience as a public prosecutor and superintendent public prosecutor. He specialises in white-collar crime, and handles cases relating to concealing assets overseas, offshore tax evasion, and violation of the Customs Act and Foreign Exchange Transactions Act.