

January 23, 2020

**Legal Update**

# Customs-Related Amendments to Tax Laws for 2020

The recent approval of tax amendments for 2020 by the National Assembly of Korea included the following customs-related changes:

## 1. New Provision in the Restriction of Special Taxation Act (“RSTA”) – Reduction/Exemption of Customs Duties for Machinery/Equipment for Bonded Warehouse Facilities of Small and Medium-Sized Companies or Middle-Standing Enterprises (“SMEs”)

- Article 118 of the amended RSTA includes a new provision (Subparagraph 22) for the reduction/exemption of customs duties for machinery/equipment for bonded warehouse facilities (“Bonded Factories”) of SMEs. The purpose is to encourage them to use the bonded factory system for processing trade.
- The new provision states that until December 31, 2022, there will be customs duty exemptions for importing machinery/equipment that are to be used for Bonded

Factories of SMEs with a license to establish and operate them under the Customs Act (“CA”), where it is difficult to produce such machinery or equipment in Korea.

- Until now, Bonded Factories that imported materials were allowed to receive a tax reduction or exemption; however, they had to pay customs duties on the machinery/equipment for the facilities (customs clearance) to be able to use them.

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## 2. Broadened Scope of Re-imported Items Entitled to Customs Duty Exemption under the Customs Act<sup>1</sup>

- In principle, items re-imported within two years after they are exported with no manufacturing / processing / repair / use abroad are entitled to customs duty exemption.
- As an exception, even if such re-imported items have been used, they are entitled to the customs duty exemption, where they are displayed or used in fairs, exhibitions, competition shows, among others, or where the items have been exported to be temporarily used under certain contracts (e.g., lease agreements).
- To support exporters and Korean participation in international athletic events and sporting games, the amended Customs Act broadens the scope of items entitled for the exemption to include:
  - (i) Installation / assembly / unloading equipment;
  - (ii) Items required for the exportation such as quality-measuring equipment;
  - (iii) Athletics-related items temporarily moved out of the country for participation in international athletics events or sporting games; and
  - (iv) Exported items returned within one year due to defects.

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1. See Article 99 of the Customs Act, and Article 54 of the Enforcement Rules of the Customs Act.

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### 3. New Provision in the “Act on Special Cases of the Customs Act for the Implementation of the Free Trade Agreements (“ASC”) – Exception to the Application Period Requirement for Ex Post Facto Application of the FTA Preferential Customs<sup>2</sup>

- An importer, who failed to apply for the application of the agreed customs before the acceptance of its import declaration, may apply for the FTA customs within one year after the acceptance of its import declaration of the relevant item.
- Also, the amended ASC provides a remedy for an importer whose tax amount has been corrected, where the declared tariff classification is determined to be an error. Such an importer may apply for the FTA customs within 45 days after receiving the customs notice, regardless of the period of application for the FTA customs.
- While the ex post facto application for the FTA customs should be accompanied by the certificate of origin, it should be noted that this amendment has limited effects, where the deadline for issuance of the certificate of origin under a certain FTA has passed at the time of the ex post facto application.

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### 4. Other Amended Provisions

#### A. Increase in the amount to be paid for a notification disposition

- Article 311 of the Customs Act includes new provisions on the exemption of notification disposition, and Article 270-2 of the Enforcement Decree of the Customs Act provides the criteria for exemption.
- The fine will be revised upward – from 20% of the notified amount to 30%.
- To ease taxpayer burden, a notification disposition can be exempted for a minor violation of the Customs Act.

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2. See Article 9 of the ASC, and Article 5 of the Enforcement Decree of the ASC.

## B. Introduction of the imported-goods purchase agent registration system under the Customs Act

- Under Article 222 of the Customs Act, a new system for the registration of purchase agent service providers of imported goods is being introduced to enable a systematic management and supervision of the purchase agent service of imported goods.
- This system will become effective July 1, 2021.
- A person engaged in the purchase agent business as of the effective date will be deemed as registered until June 30, 2022.

### About Shin & Kim's Customs Practice:

Shin & Kim's Customs Practice Group advises on all customs-related matters, including duties and tariff classification, advance customs valuation agreements ("ACVA"), customs audits relating to royalties, improper reductions, exemptions and drawbacks.

Our Customs team includes well-respected attorneys, who are market-leading customs experts, as well as former customs officials, who are serving as senior advisors and customs consultants at Shin & Kim. The breadth & depth of experienced of our Customs Practice Group members allow us to effectively and efficiently communicate and consult with relevant administrative agencies.

We regularly represent our clients in connection with criminal investigations by the Korea Customs Service ("KCS") regarding customs duty evasions, unlawful imports & exports, improper labeling of country of origin, violations of foreign exchange-related laws, as well as customs and tax appeals, and administrative litigation.

Our team is led by: **Hee-Chan Byun**, former Presiding Judge of the Seoul Cenral District Court and former Research Judge for the Supreme Court of Korea's Taxation Department; by **Choon Cho**, a widely-recognized expert, who also serves as the Vice President of the Korean Tax Law Association; and by **Do-Hoon Woo**, a highly experienced attorney and CPA, specializing in tax and customs advisory and related litigation. Among other key team members include **Yun-Ok Choi**, a seasoned customs consultant with over 15 years of experience advising multinational companies on various customs-related issues in top consulting firms, accounting firms and law firms.

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Should you have any questions or comments about the contents of this newsletter, or if we can be otherwise helpful, please do not hesitate to contact us.

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