SHIN & KIM
법무법인(유) 세종

Court Recognizes Irish Regional Hub as Beneficial Owner and Substantive Owner of Korean Software Royalties Under the Korea–Ireland Tax Treaty

(Supreme Court Decision 2026Du30006, 2026Du30007 (consolidated), 2026Du30008 (consolidated) rendered on April 30, 2026)

Overview[1]

This case addressed the beneficial ownership requirement under a tax treaty and its relationship to the concept of "substantive owner" under Korea's domestic substance-over-form doctrine.

The R Group operated a global software distribution structure in which its U.S. parent company, ParentCo, owned the relevant intellectual property and distributed software products through affiliated entities worldwide. Initially, software royalties generated in Korea were paid directly by the Korean subsidiary to ParentCo, with withholding tax applied at the reduced rate of 15% under the Korea–U.S. Tax Treaty.

As part of a regional restructuring, the R Group designated an Irish affiliate, IrishCo, as its Asia-Pacific master distributor. Thereafter, the Korean subsidiary paid software royalties to IrishCo rather than directly to ParentCo. The taxpayer took the position that the payments qualified for treaty benefits under the Korea–Ireland Tax Treaty, under which the software royalties were exempt from Korean withholding tax, and accordingly did not withhold Korean tax on the payments.

The National Tax Service ("NTS") challenged this treatment and assessed more than KRW 300 billion in withholding tax, arguing that ParentCo effectively received the royalty income and that IrishCo functioned merely as an intermediary.

The dispute raised three principal issues:

- Whether the payments constituted business profits derived from software distribution activities or royalty income arising from the use of intellectual property;
- Whether IrishCo qualified as the beneficial owner of the royalty income under the Korea–Ireland Tax Treaty; and

- Whether IrishCo should be disregarded under Korea's substance-over-form principles, resulting in ParentCo being treated as the substantive owner of the income.

The court of first instance ruled in favor of the tax authorities, finding that IrishCo could not be regarded as the beneficial owner because it was contractually required to remit approximately 98.5% of the income it received to upstream entities and allegedly lacked sufficient personnel and operational substance.

Court's Decision

The appellate court reversed the lower court's decision, and the Supreme Court subsequently upheld that judgment.

The court defined a beneficial owner as a person that receives royalty income and possesses the right to use and enjoy that income without a legal or contractual obligation to pass it on to another person. Beneficial ownership, the court emphasized, must be determined on the basis of a comprehensive assessment of the recipient's business functions, operational substance, and actual control over the income.

The court further clarified that the treaty-law concept of beneficial ownership and the domestic-law concept of the substantive owner of income are legally distinct, even though the factual considerations relevant to each analysis may overlap. Accordingly, even where a recipient qualifies as the beneficial owner under a tax treaty, treaty benefits may still be denied if the arrangement constitutes treaty abuse under Korea's substance-over-form principles.

Applying these principles, the court concluded that IrishCo was both the beneficial owner and the substantive owner of the royalty income.

The court found that IrishCo did not merely serve as a conduit through which funds automatically flowed to upstream affiliates. Although IrishCo ultimately made royalty payments to upstream entities, it retained the funds for significant periods and exercised discretion over their management. The court noted that software-related payments were settled only twice annually and that the funds received from the Korean subsidiary were commingled with revenue generated from numerous affiliates throughout the Asia-Pacific region.

The court rejected the tax authorities' argument that the high proportion of payments remitted to related parties was determinative. The relevant inquiry, the court held, was whether IrishCo acted merely as a nominal recipient with an obligation to immediately pass the income to another entity. The court concluded that IrishCo exercised substantive control over the funds and used them to finance substantial operating activities and business expenses.

The court also gave significant weight to IrishCo's operational substance. IrishCo had been established to manage the Group's Asia-Pacific distribution business and maintained an appropriate governance framework, including regular board meetings and independent decision-making processes. In addition to its headquarters in Ireland, IrishCo operated a regional office in Singapore and employed more than 500 personnel engaged in sales support, technical support, management, and supervisory functions throughout the Asia-Pacific region.

On the basis of these findings, the court concluded that IrishCo conducted genuine business activities using its own personnel and resources, exercised independent control over the income it received, and therefore could not be disregarded for Korean tax purposes. As such, ParentCo could not be recharacterized as the beneficial owner or substantive owner of the royalty income.

Practical Implications

This decision provides one of the most comprehensive judicial analyses to date of beneficial ownership under Korea's tax treaty framework.

The court reaffirmed that beneficial ownership cannot be determined solely by reference to formal cash-flow patterns or the proportion of income remitted to upstream entities. The key inquiry is whether the recipient exercises substantive control and economic ownership over the income and whether it is subject to a legal obligation to pass the income to another person. In reaching this conclusion, the court aligned Korean jurisprudence more closely with OECD commentary and internationally accepted treaty-interpretation principles.

The decision is particularly noteworthy for its clarification of the distinction between beneficial ownership under tax treaties and the domestic-law concept of the substantive owner of income—an area that had generated uncertainty in earlier cases.

For multinational groups operating regional headquarters or distribution hubs, the ruling offers valuable guidance on how Korean tax authorities and courts evaluate operational substance. Particular attention should be given to whether a regional entity possesses sufficient personnel, office facilities, management functions, and decision-making authority to conduct genuine business activities within its designated region.

The decision also emphasizes the importance of demonstrating substantive control over income and assets. Factors such as the retention and management of funds, the use of income to finance operating expenses, and the ability to make independent commercial decisions may be critical in establishing beneficial ownership.

Multinational enterprises should carefully document the commercial rationale for regional hub structures, maintain robust governance records, and ensure that board minutes, internal policies, and decision-making processes accurately reflect the entity's operational independence. These measures can play a significant role in mitigating withholding tax risks and defending treaty-benefit claims during tax audits and disputes.

[1] The decision became final following the Supreme Court of Korea’s dismissal of the appeal without further deliberation, pursuant to the Act on Special Cases Concerning the Procedure for Appeal to the Supreme Court. Since the Supreme Court dismissed the case without issuing a separate written opinion, the analysis in this newsletter is based on the detailed legal principles and holdings articulated by the lower court — Seoul High Court, Decision 2023Nu34509, 2023Nu34516 (consolidated), and 2023Nu34523 (consolidated) rendered on November 26, 2025.

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