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Court Rejects Permanent Establishment Status for Korean Affiliate Providing Marketing and Advertising Support to Foreign Platform Operator

(Seoul Administrative Court Decision 2024Guhap52496 rendered on April 23, 2026)

Overview

This case considers whether the activities of a Korean affiliate can create a permanent establishment ("PE") in Korea for a foreign enterprise under the applicable tax treaty.

The taxpayer, MCo, was an Irish subsidiary of the M Group, a multinational technology group operating a global digital platform business. MCo earned advertising revenue by providing online advertising services to Korean advertisers through its platform.

In 2010, MCo entered into a sales and marketing services agreement with its Korean affiliate, KCo. Under that agreement, KCo provided advertising sales support and marketing assistance in Korea and received arm's-length compensation for those services. KCo reported and paid Korean corporate income tax on the service fees it earned.

The NTS argued that MCo had a PE in Korea through KCo's business premises and personnel. In the NTS's view, MCo effectively carried on advertising sales activities in Korea through KCo and therefore was subject to Korean corporate income tax and value-added tax on the related advertising revenue.

The key issue was whether KCo's office and activities could be attributed to MCo so that MCo would be treated as having a PE in Korea under the Korea–Ireland Tax Treaty.

MCo argued that KCo was a separate legal entity carrying on its own business, that MCo had no right to use or control KCo's premises, and that KCo's functions were limited to preparatory or auxiliary activities rather than MCo's core business operations.

Court’s Decision

The court ruled for MCo and held that KCo did not constitute a PE of MCo in Korea.

In analyzing whether a PE existed under the Korea–Ireland Tax Treaty, the court concluded that the required conditions were not met. In particular, the court found that MCo neither possessed nor controlled KCo’s business premises and therefore did not have the necessary right to use or dispose of the premises as its own place of business.

The court also focused on the nature of the activities performed by KCo. Although KCo provided sales support and marketing services that benefited MCo’s business, the court held that those activities were preparatory or auxiliary in nature, rather than essential and significant parts of MCo’s core business.

In reaching that conclusion, the court emphasized the features of the platform business model. It found that the principal value drivers of the platform business—including platform development, technological innovation, intellectual property ownership, server infrastructure, and platform operation—were developed, owned, operated, or managed outside Korea by the ultimate parent company of the M Group. KCo was not involved in the development, operation, or management of the platform itself.

Accordingly, although KCo’s activities contributed to the generation of advertising revenue, the court concluded that those activities could not be treated as MCo’s own business operations. KCo therefore could not be regarded as a PE of MCo, and MCo could not be treated as having a PE in Korea solely because of KCo’s presence and activities.

On that basis, the court held that the corporate income tax and value-added tax assessments issued against MCo were unlawful.

Practical Implications

This decision is another significant example of the Korean courts rejecting attempts to extend Korea’s PE concept to foreign digital and platform businesses operating through local affiliates.

For many years, the Korean tax authorities focused primarily on transfer pricing adjustments when reviewing multinational operating structures. More recently, however, the NTS has increasingly sought to assert PE where foreign enterprises conduct business in Korea through local subsidiaries. Korean courts have generally approached those assertions cautiously, and this decision continues that pattern.

Of particular importance is the court’s analysis of what constitutes a foreign enterprise’s “core business activities.” In the context of digital platform businesses, the court adopted a functional approach and treated software development, algorithm design, platform operation, server management, and intellectual property ownership as the primary value-creating functions. By contrast, local marketing and advertising support activities were viewed as preparatory or auxiliary services rather than core business operations.

The decision also reinforces the importance of maintaining a defensible transfer pricing structure. Where a local affiliate performs support functions, receives arm's-length compensation under an appropriate arrangement, and pays Korean tax on that compensation, the fact that its activities produce economic benefits for a foreign affiliate should not, in and of itself, result in the attribution of a PE to the foreign enterprise.

At the same time, multinational businesses should recognize that the international tax landscape for large technology companies continues to evolve. Ongoing discussions concerning digital services taxes, diverted profits taxes, and broader reforms to the taxation of the digital economy may affect how tax authorities approach PE issues in the future.

For multinational groups operating digital platforms or other technology-driven businesses, this decision underscores the importance of clearly delineating functions, assets, and risks among group entities, maintaining robust intercompany agreements, and documenting the limited nature of local support activities. Those steps remain important in mitigating PE risk and defending against future challenges by tax authorities.

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