



# Shin & Kim Achieves Landmark Victory in Transfer Pricing Dispute Over Overseas Subsidiary Restructuring

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Shin & Kim has secured a decisive victory in a significant international tax litigation matter involving transfer pricing determinations in connection with the restructuring of overseas subsidiary ownership structure. The Supreme Court's decision, which affirmed rulings from lower courts, represents an important precedent for multinational enterprises undergoing global corporate restructuring.

## 1. Background

Corporation A, a Korean-headquartered multinational with multiple overseas subsidiaries, undertook a restructuring of its overseas subsidiary ownership structure. As part of this restructuring, Corporation A in-kind contributed shares of Corporation C (a foreign subsidiary) to Corporation B (another foreign subsidiary located in the same country as Corporation C) in exchange for newly issued shares in Corporation B.

## 2. The Tax Authority's Position

Corporation A had recorded the contributed shares at an acquisition cost basis in its accounting books—equivalent to the won-converted amount originally paid for the shares—and stated the price of the contributed shares as the book value in the in-kind contribution agreement. However, at the time of the contribution, the fair market value of the contributed shares had declined below the book value.

Following the in-kind contribution, Corporation A evaluated the acquired shares by using complementary valuation method under the Inheritance and Gift Tax Act and recognized the difference between the book value of the contributed shares and the evaluated value of the acquired shares as a loss on disposal of the contributed shares, based on which it

prepared and submitted its corporate tax return.

The tax authority, based on equity method valuations and foreign exchange transaction documentation, determined that the book value of the contributed shares represented their arm's length price under the Adjustment of International Taxes Act ("AITA"). Further, the tax authority determined that, since the evaluated value of the acquired shares is lower than this purported arm's length price of the contributed shares, the in-kind contribution transaction is subject to a transfer pricing adjustment under the AITA and issued a corrected tax assessment.

### 3. The Litigation and Shin & Kim's Arguments

Shin & Kim successfully demonstrated that the tax authority had fundamentally misapplied transfer pricing principles. The firm established that the book value of the contributed shares recorded in Corporation A's accounting books represents merely their historical aggregate acquisition cost and cannot reflect their fair market value and therefore cannot serve as the arm's length price under the AITA.

Additionally, the tax authority, in the course of the litigation, raised an alternative argument that the in-kind contribution constitute a transfer of assets for consideration and, accordingly, the transfer price of the contributed shares as stated in the in-kind contribution agreement, not the evaluated value of the acquired shares, should have been recorded as gross income. Shin & Kim persuasively argued that the tax authority's argument is applicable to the in-kind contribution for the purpose of establishing a new corporation, our case is not for that purpose, it is just for the capital increase of Corporation B and thus the transfer price of the contributed shares shall be determined by reference to the fair market value of the acquired shares under the Corporate Tax Act.

### 4. Court Decisions

The courts at all levels—from the trial court through the Supreme Court—unanimously accepted the arguments advanced by Shin & Kim and revoked the tax assessment. Most significantly, the Supreme Court issued detailed reasoning that will serve as binding precedent in future cases.

### 5. Significance

This decision carries substantial implications for multinational enterprises. It establishes important precedent concerning the determination of arm's length price involving in-kind contribution of shares between overseas subsidiaries and the burden of proof to demonstrate the arm's length price, which routinely occur during corporate restructuring activities in global operations. As such, this decision provides clarity and protection for taxpayers engaged in legitimate international business restructuring.

[\[Korean version\]](#) 「해외 자회사의 소유구조 개편」 관련 국제조세소송 승소 사례

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