



WCO publishes guide to customs valuation and transfer pricing

Tax Update

24 JUN 2015

By: Joel Cooper

The challenges faced by multinational enterprises (MNEs) in navigating the interface of transfer pricing and customs valuation rules is not a new phenomenon. However, due to a marked increase in recent years of the number of countries introducing or updating their transfer pricing legislation and scaling up their auditing and monitoring activities, coupled with an increase in customs authorities' scrutiny of related party transactions, the pressure on multinational enterprises to ensure a coordinated approach to transfer pricing and customs valuation strategies has increased.

The interface of customs valuation and transfer pricing is not only a challenge for business, it is also a major challenge for revenue authorities who often struggle to reconcile and administer the two sets of rules, whilst also considering the knock on implications for value added tax (VAT), where applicable¹. Recognising this, on 24 June 2015, the World Customs Organization (WCO) published the "WCO Guide to Customs Valuation and Transfer Pricing" (the Guide)². The Guide aims to assist Customs officials responsible for customs valuation policy or who are conducting audits and controls on multinational enterprises in understanding and navigating the relationship between customs valuation and transfer pricing.

The Guide consists of six chapters that provide an introduction to the topic (Chapter 1); summarises the applicable customs valuation and transfer pricing rules (Chapters 2 and 3); discusses the linkages between transfer pricing and customs valuation and the role of transfer pricing documentation in examining related party transactions for customs purposes (Chapters 4 and 5); and, specifies good practices for customs valuation policy makers, business and tax administrations (Chapter 6). The Guide also includes a number of annexes that provide an overview of national initiatives, reproduce a number of important publications and list typical elements of transfer pricing documentation that may be relevant for customs officials examining related party transactions.

The WCO anticipates that by promoting a greater understanding of the topic, the Guide will lead to a more consistent approach and will help to facilitate trade as a result:³

"Greater understanding of the issue and a sharing of ideas and solutions will provide more certainty for governments and business and will lead to a more consistent approach and accurate determination of duty liabilities. Burdens on business can also be reduced by taking a more joined-up approach, which can be seen as an important trade facilitation measure."

Selected highlights from the guide include:

- **Transfer pricing is emphasised as being a "neutral concept"**. The Guide seeks to address the common

misconception that "transfer pricing" necessarily implies the manipulation of prices in order to avoid taxes by emphasising that "transfer pricing is a neutral concept that simply refers to the determination of transfer prices between related parties."⁴

- **The 'transaction value' is re-confirmed as the starting point for customs valuation, even in the context of related party transactions.** The Guide reconfirms that under the WTO Valuation Agreement⁵ (the "Agreement") the starting point for customs valuation should, to the greatest extent possible, be the transaction value and emphasises that that even in related party transactions the transaction value may still be accepted, provided that the relationship did not influence the price.⁶
- **Customs officials are encouraged to consider transfer pricing studies when examining related party transactions.** When Customs are examining the "circumstances of sale" in order to determine whether the transaction value is to be accepted, consistent with Commentary 23.1,⁷ the Guide suggests that "there is much information contained in transfer pricing studies and documentation which can assist Customs".⁸
- **Confirmation that the examples in the Interpretative Notes to the Agreement concerning the examination of the "circumstances of sale" are not exhaustive tests.** The two examples in the interpretive note to Article 1.2 of the WTO Valuation Agreement are often mistakenly considered to be exhaustive. The Guide makes it clear that these examples are not to be considered exhaustive and that Customs may consider other means of examining the circumstance of sale, taking into account the totality of evidence available, including transfer pricing documentation.⁹
- **The desirability for consistent treatment of transfer pricing adjustments for Customs purposes is highlighted.** The Guide reports that the treatment of transfer pricing adjustments by Customs authorities around the world is inconsistent and highlights the desirability that the Customs community strive to achieve a more consistent approach in this regard.¹⁰
- **Customs Administrations are encouraged to provide advance valuation rulings.** Customs administrations are encouraged to provide advance rulings for Customs valuation. In this regard, the Guide makes specific reference to Article 3 of the WTO Trade Facilitation Agreement which, in addition to, requiring members to provide a facility for advance rulings on classification and origin, encourages members to provide rulings on customs valuation.¹¹
- **Provides an overview of the key elements of transfer pricing documentation that may be useful to customs officials.** Although the Guide does not go so far as to clarify what documentation should be provided by importers in order to demonstrate that the relationship has not influenced the price, Annex VIII does provide an example of the key elements found in transfer pricing documentation that may be relevant for customs valuation.¹²
- **"Good practices for business" are specified.** In addition to specifying good practices for customs valuation policy managers and tax administrations, Chapter 6 of the Guide specifies the following "good practices for business":¹³
 - MNEs who import are encouraged to ensure their Customs and tax advisors (either internal or external) communicate with each other regarding the mutual needs of the Customs and tax authorities in respect of transfer pricing and customs valuation
 - Consider the needs of Customs when preparing transfer pricing documentation
 - Consider Customs' needs in the development of [advance pricing agreements]
 - Depending on national procedures, ensure Customs are given advance notification where post-importation adjustment may occur at a later date
 - Consider requesting advance rulings from Customs, where available
 - Work with Customs to provide and help interpret transfer pricing analyses and data related to imported goods
- **Provides an update as to the on-going work of the WCO and the Technical Committee on Customs Valuation.** The Guide provides insight into previous and on-going initiatives of the WCO to further the mutual understanding of transfer pricing and customs valuation issues within tax and customs administrations. These include the on-going work of the WCO Technical Committee on Customs Valuation, which is currently examining two draft case studies, and the programme of regional workshops that have been run by the WCO, jointly with the OECD and the World Bank Group over the past two years.¹⁴

Conclusion

The different rules applicable for customs valuation and transfer pricing give rise to complex compliance

challenges for multinationals engaged in related party imports of goods. Although this Guide does not aim to provide definitive guidance on the issues raised, by highlighting many of the key issues faced by both business and Customs officials it does help move the debate forward by promoting awareness and mutual understanding of the issues. Whilst the publication of this Guide may result in greater scrutiny of related party transactions by some Customs authorities, multinationals that take a proactive approach to developing transfer pricing policies that adequately consider customs implications will benefit from Customs' authorities greater understanding of the issues. The knock on impact of changes to customs values for VAT purposes should also be considered, where applicable.

DLA Piper will continue to monitor developments in this area. For more information please contact the author, who, in his previous role at the World Bank Group, provided input to the drafting of the Guide, participated as an observer at the WCO Technical Committee on Customs Valuation and was involved in the delivery of the regional workshops referred to above.

-
- 1 - Customs values typically form the starting point for the determination of the value of imported goods for VAT purposes.
 - 2 - The guide can be accessed via the WCO website [here](#)
 - 3 - Section 1.3, the Guide.
 - 4 - Section 3.1, the Guide.
 - 5 - The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 is obligatory for all WTO member countries to implement. In addition a number of non-WTO member countries have chosen to adopt the principles in the agreement. As a result, the valuation principles in the WTO Valuation Agreement are applicable for the vast majority of all international trade in goods.
 - 6 - Section 2.1, the Guide.
 - 7 - Commentary 23.1 - Examination of the Expression "Circumstances of Sale" Under Article 1.2(A) in Relation to the Use of Transfer Pricing Documentation.
 - 8 - Section 5.2.1, the Guide.
 - 9 - Section 5.2.2, the Guide
 - 10 - Section 5.3.1, the Guide
 - 11 - Section 5.2.3, the Guide
 - 12 - Annex VIII, the Guide
 - 13 - Section 6.3, the Guide
 - 14 - Sections 4.3-4.5, the Guide.

AUTHORS



Joel Cooper

Partner

London | T: +44 (0)20 7349 0296
