



GLOBAL TRANSFER PRICING SERVICES

Transfer Pricing, Customs Valuation and Excise Valuation

Observations, Opportunities and Challenges

October 2010

TAX

Talking Points

- **Project overview**
- **Key observations**
- **Opportunities and challenges**
- **Discussion**

Project Overview

- **Establishing internationally consistent customs, transfer pricing and excise base values**
- **Activities undertaken**
 - Reviewed legislation of Australia, Thailand and Vietnam
 - Questionnaires distributed to key government contacts
 - Conducted field visits with local government officials
 - Conducted an analysis of current legislation in relation to customs, transfer pricing and excise valuation

International Framework

- **The World Trade Organization and the Organisation for Economic Co-Operation and Development have established the framework**
- **Most governments follow the international framework even if they are not members of the organisation**
- **The goals of each organisation are similar and, in practice it is our view that for international taxation purposes they should work in harmony**

Practical Application

- **There is a technical tension between the WTO customs valuation agreement and the OECD transfer pricing guidelines**
- **However, companies need certainty globally**
- **Where transfer pricing relates to the cost of the goods the transfer pricing documentation should support the customs value**
- **When the excise tax base is driven by the customs value, because the tax is paid on an ad valorem basis, pricing changes can have significant impact on excise payable**

The Australian experience

- **Public guidelines issued providing importers with clear understanding of obligations**
- **Ability to work proactively with Australia Customs and Border Protection Service to establish methodology in advance**
- **Allowance of retroactive pricing adjustments as the price payable for customs value**
 - Upward adjustments to price, importers must pay shortfall
 - Downward adjustments to price, importers can receive refunds for up to four years in the past

Local observations

- In Australia, Vietnam and Thailand there is still uncertainty as how administrations address related party pricing issues for customs purposes
- Our research indicates that, some local policies in each jurisdiction may be inconsistent with the international framework (these are noted in the research matrix which coordinates with this presentation)
- With the issuance of a practice statement in 2009, Australia has begun to develop public policy relating to transfer pricing adjustments to address uncertainty on customs values of imported goods
- Vietnam and Thailand do not clearly provide for retroactive pricing adjustments, which could prevent companies from effectively addressing pricing concerns

What is the goal?

- **Best practices and certainty for multinational companies**
- **How is this achieved?**
 - A policy document signed by the customs, tax and excise authorities (e.g., an MOU)?
 - A standard information request for documentation covering transfer pricing, customs and excise information?
 - Operational guidelines (e.g., practice statements, public rulings)?
 - Advanced confirmation with customs and tax authorities of pricing arrangements (e.g., APA)?
 - Training provided to customs and tax authorities on how each determines arm's length prices?

Opportunities and challenges

- **Basis for countries to establish policies to address uncertainty (e.g., allowance of retroactive pricing adjustments)**
- **Coordination between customs and tax authorities to provide consistent application of international agreements and convergence of methodologies**
- **Clarification of policies and understanding of the legislative intent to ensure local implementation is consistent with international framework**



Discussion



Presenter's contact details

Tony Gorgas

Partner, KPMG in Australia

tgorgas@kpmg.com.au

kpmg.com.au

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2010 KPMG, an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International.
Liability limited by a scheme approved under Professional Standards Legislation.