

Tax Alert

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Let's talk

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Value for customs purposes: deductions allowed to the transaction value of goods imported

In brief

The primary basis for the customs value under the World Trade Organisation's General Agreement on Tariff and Trade ('GATT') is the 'transaction value', as defined in Article 1. Article 1 must be read together with Article 8, which provides, *inter alia*, for adjustments to be made to the price actually paid or payable in cases where the price includes certain specific non-dutiable elements. Such elements should not form part of the transaction value and, therefore, should not be included in the value for customs purposes of the goods imported.

In detail

Buying commissions

In many cases, import transactions involve a third party who is not the seller or the buyer of the imported merchandise, but an intermediary whose function it is to assist the buyer or the seller in the buying or selling transaction.

Commissions paid to buying agents may be excluded from the value declared for customs purposes. However, the decision to exclude or deduct the commissions from the customs value declared should be approached cautiously. If the duty determination is made on the basis that the commissions are being paid for services provided by a buying agent, it is important,

legally and for practical purposes, to be comfortable that the services provided by the buying agent are indeed services normally associated with the scope and function of *bona fide* independent buying agents.

In practice, the reflection of a buying commission on an invoice, on its own, does not entitle the importer to an automatic reduction in the customs value of the imported goods. Rather, a holistic approach is required in which all the facts and circumstances are considered and compared to the terms and conditions, as well as implementation, of a buying agency contract between independent parties dealing at arm's length. It is important to note that no single factor is

determinative. First, the legal documentation must be appropriate. Then, the implementation of the legal agreement must provide the necessary evidence that the services being performed are those of a *bona fide* buying agent. In our experience, we find that there are often commercial transactions that are (or that have elements) that should be treated as buying commissions. Where this is the case, due care and attention should be followed to ensure that the relevant commercial transactions or elements are properly not dutiable.

Interest charges

The cost of financing goods (i.e. interest charged) is not considered to be part of the transaction value (i.e. the actual price paid or payable for goods imported). In terms of Article 8 of GATT an adjustment can be made to the value for customs purposes provided that the interest charged is separately distinguishable from the actual price paid or payable for the goods being valued.

The deduction of charges for interest from the customs value under a financial arrangement entered into by the importer and relating to the purchase of imported goods should be approached with care. The financial arrangement must be made in writing and the importer must be able to demonstrate that the claimed rate of interest does not exceed the prevailing rate in the country where the finance was provided.

The deduction of interest charges is one example that is often seen in practice where, with appropriate care and attention and with consideration being given to a group's payment policy for intra-group sales of products, the interest element of the transaction value (where it is simply a charge for the time value of money) should not be dutiable.

Customs valuation rulings

The deduction of any charges (e.g. buying commission and or interest charges) from the value for customs purposes of imported goods should be approached by importers with appropriate care and attention to detail. In terms of section 65(4)(a)(i) of the Customs and Excise Act, the Commissioner

may challenge any deduction made to the customs value of goods imported and, where it is deemed necessary, ascertain or determine the correct customs value of such goods. This allows for the collection of any underpayments in import duty and VAT.

In order to manage and mitigate this business risk, importers should review their main business transactions on which the majority of the import duty is paid, consider the extent to which any deductions have been (or should have been) made to the customs value of imported goods and, where there is any uncertainty (or the amounts are material), it is advisable that an application for a firm customs valuation ruling be requested from SARS.

The PwC Customs and International Trade Team has extensive knowledge and experience (accumulated in a wide variety of customs matters across a broad range of industries). We assist our clients in resolving disputes in relation to customs valuation, establishing policies, conducting compliance reviews and filing for ruling requests to ensure that our clients minimise the risks that are associated with customs valuation.

How we can help

Our Customs and International Trade Team, which consists of experienced customs, excise and international trade consultants, can advise you on customs, excise and trade rules affecting your imports, exports and manufactured goods and discuss with you how you might plan your affairs to manage this area of business risk and cost.

We leverage off the PwC cross-border specialist networks (including Transfer Pricing, International Tax, Legal and Corporate Finance) with the aim of providing a truly global and holistic approach that addresses both the direct and indirect tax, regulatory and finance implications of the commercial transactions. This ensures that this aspect of the value chain is optimised. Our service is global, and we are happy to assist with global customs, excise and international trade measures through our network of specialists in over 100 countries.

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