

Taiwan Updates: Customs values of imported goods in related party transactions may be assessed in line with retroactive transfer pricing adjustments voluntarily made by companies in Taiwan from the year 2020

On 15th Nov. 2019, the Taiwan Ministry of Finance released a new tax ruling (Tai Tsai Shui #10804629000) specifying the requirements to be met, for companies to take into account retroactive transfer pricing (TP) adjustments voluntarily made, when calculating their taxable income. The ruling will be applicable to transactions made from the year 2020.

According to the ruling, among other requirements for voluntary TP adjustments to be taken into account for Taiwan income tax purposes, taxpayers must make corresponding adjustments to their positions regarding other taxes, including customs duty, value added tax and excise tax etc., and must comply with tax withholding requirements where relevant. Furthermore, the ruling provides high level guidelines on the filing of final customs value assessment, which are discussed below.

In light of the above-mentioned, where voluntary TP adjustments can be reflected retroactively on the customs value of imported goods, importers need to prepare well in advance of the making of the TP adjustments. In the corresponding import declarations, there should be a clear indication that the values of the affected goods are subject to one-time transfer pricing adjustments. Moreover, the importers need to apply for the goods to be customs cleared with guarantee under Art. 18.3.3 of the Taiwan Customs Act., using the goods' provisional values for calculating the customs duties at that time, and provide the required documents prescribed in the said ruling to support their applications.

TP adjustments made to the provisional values of previously declared goods are to be reported by importers in the application for final customs value assessments of the affected goods. This must be done no later than one month after the end of each fiscal year, in which voluntary TP adjustments are made. In the application letter, the importers should indicate the import declaration number(s), item number(s), the provisional and TP adjusted values of the affected goods. In addition, they should explain how the final value is determined, or demonstrate the calculation of the final value, and attach to the application letter documents such as the relevant inter-company agreement, formal commercial invoice, proof of payment and other documents the authority may request. Rather than automatically accepting the reported changes to the provisional values, the Taiwan customs authorities will review and assess the reported changes based on the customs valuation rules. After making final customs value assessments, the Taiwan customs authority will accordingly request supplementary payments or refund customs duties and other relevant taxes as appropriate.

Our observation and comments:

Under the existing practice, TP adjustments on previously imported goods are generally not taken into account without regard to the direction of the adjustments, when determining the customs values of the affected goods. That said, where importers voluntarily make retroactive TP adjustments, they may suffer from excessive taxation in some cases, or enjoy double dips in others. This will be changed after tax ruling Tai Tsai Shui #10804629000 comes into effect.

With the application of the said ruling, importers which voluntarily adjust their intercompany purchase price downward to achieve a higher and more acceptable TP result, but suffer from not being allowed (under the existing practice) to adjust the relevant customs values down correspondingly, are given the legal ground to make the said corresponding customs values. In the reverse, companies which benefit from declaring low import values, and voluntarily adjust their transfer pricing results to land at a lower taxable income without correspondingly upward adjusting the declared customs values of the affected goods, will risk their transfer pricing adjustments being denied for corporate income tax purposes.

While the new tax ruling marks the starting point of the alignment of customs value assessments and transfer pricing adjustments, it is silent on how declared export prices can be amended because of TP adjustments. In this

regard, though Taiwan does not levy duty on export transactions, changes to the declared values of exported goods (e.g. because of transfer pricing), may change the amount of the reported zero VAT rated sales, and impact the exporter's VAT positions. How declared export prices can be aligned with TP adjusted prices requires further clarification.

Moreover, the implementation details of the ruling, including without being limited to the following, needs to be further clarified:

- Whether the scope of the ruling is not limited to “one-time” TP adjustments, and will equally apply to multiple TP adjustments, provided they are made before the fiscal year end.
- How to support the allocation of lump sum TP adjusted amounts to various imports, in the (likely) case a direct attribution is not possible.
- What the criteria are of the comparable data when using deductive or computed methods in assessing the acceptability of the customs values.
- Whether the TP adjusted amounts need to be commercially settled before the application of final customs value assessments.

Many group companies set their product pricing as well as profit and loss account targets based on market forecasts, and need to consider making TP adjustments when their projections deviate largely from the actual situations. It is advisable that these companies consider what other tax burdens/opportunities their transfer pricing adjustments may lead to in Taiwan under the application of the new ruling, and prepare for the application and subsequent discussions to safeguard their overall tax positions.

Let's talk

If you would like further advice in relation to the topic outlined above or a deeper discussion of how this issue might affect your business, please contact:

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