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10 October 2013

French finance bill for 2014 may impact customs value

On 25 September 2013, the French government announced a package of measures that would impact large companies. The measures are part of the draft finance bill for 2014 and include, amongst others, a new transfer pricing reporting obligation for certain business restructurings (i.e. transfers of functions or risks) between affiliated companies.

Under **article 15 in the proposal**, if the transferring company's gross operating profit in one of the following two years is reduced by 20% (as compared to the average gross operating profit of the three years preceding the transfer), the transferring company would have to demonstrate during an audit that it received fair compensation for the transaction.

For this purpose, the company would have to submit (if requested by the French tax authorities) any relevant information relating to the determination of results from the parties involved (including the transferee) before and after the transfer. If the transferring company fails to provide this information, profits that should have been realised would be assessed on the transferring company's side.

This measure would apply to fiscal years closing on or after 31 December 2013.

What does it mean for you?

At fiscal year closing, the transferring company's gross operating margin includes the costs related to the goods sold during the taxable year. These costs are composed amongst others by the total amount of customs value of each of the products bought by the transferring company.

If the transferring company's gross operating margin is reduced by 25% for example, this could have a direct impact on the customs value declared at importation. Indeed, one of the elements to reduce the operating margin is the customs value's increase.

If, after an audit by the French Authorities, it would be decided that the operating margin can only be reduced by 20 %, then this may have an impact on the customs value as well. One of the elements to increase the operating margin might indeed be a reduction of the customs value.

Aside from the consequences on the determination of taxable income, these new rules may thus have an impact on the goods' customs value as well.

What to do?

Companies which import goods in France and are under restructuring, leading to an operating margin reduction, must take into account that the customs value may also change. If so, this change in customs value must equally be considered under the so-called "at arm's length" principle, meaning that a customs value – under the transaction valuation method – cannot be influenced by the relationship between the seller and the buyer.

As of today, very limited information has been released on this proposal and it is likely to generate considerable debate. The parliament will discuss the proposed measures during the next couple of months. The final vote on the Finance Bill is expected before the end of 2013.

Contact

Any questions concerning this topic? Please contact your usual tax consultant at our Deloitte office in Belgium or:

- Fernand Rutten, **frutten@deloitte.com**, + 32 2 600 66 06
- Nick Moris, **nmoris@deloitte.com**, + 32 2 600 66 03
- Julien Pauwels, **jpauwels@deloitte.com**, +32 2 600 66 25
- Tom Verbrugge, **tverbrugge@deloitte.com**, + 32 2 600 66 20
- Klaas Winters, **klwinters@deloitte.nl**, +31 (0)88 288 2125
- Johan Hollebeek, **jhollebeek@deloitte.nl**, +31 (0)88 288 1992
- Jos Sijbers, **jsijbers@deloitte.nl**, +31 (0) 288 1952

For general inquiries contact:

- **bedeloittetax@deloitte.com**, + 32 2 600 60 00

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