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# UK Indirect Tax Conference 2015

## Customs valuation

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# Customs valuation

## The challenge for indirect tax professionals



### Cost reduction

Thinking strategically about international trade – for new markets, new products and new channels

Un-bundling non-dutiable elements from the customs value

Alignment with transfer pricing and setting the scene for periodic adjustments



### Compliance

Applying an appropriate methodology and embedding into business practices

Managing periodic adjustments

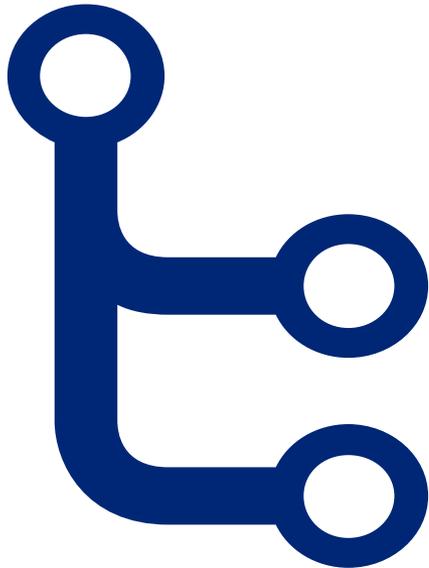
Ensure adjustments to the customs value are applied

# Customs valuation

## Basics

# Customs valuation

## Identifying the valuation method



Is there a price paid or payable?

90 – 95% of all importations use the transaction valuation\*

If not, identify alternative methodology, (predominantly in order):

2. The value of identical goods
3. The value of similar goods
-  4. A deductive value (sales price minus)
5. A computed value (cost plus)
6. Fall-back (any other reasonable method, preferably one which is an adaptation of the above rules)

# Deductions and additions to Customs Value

## Additions

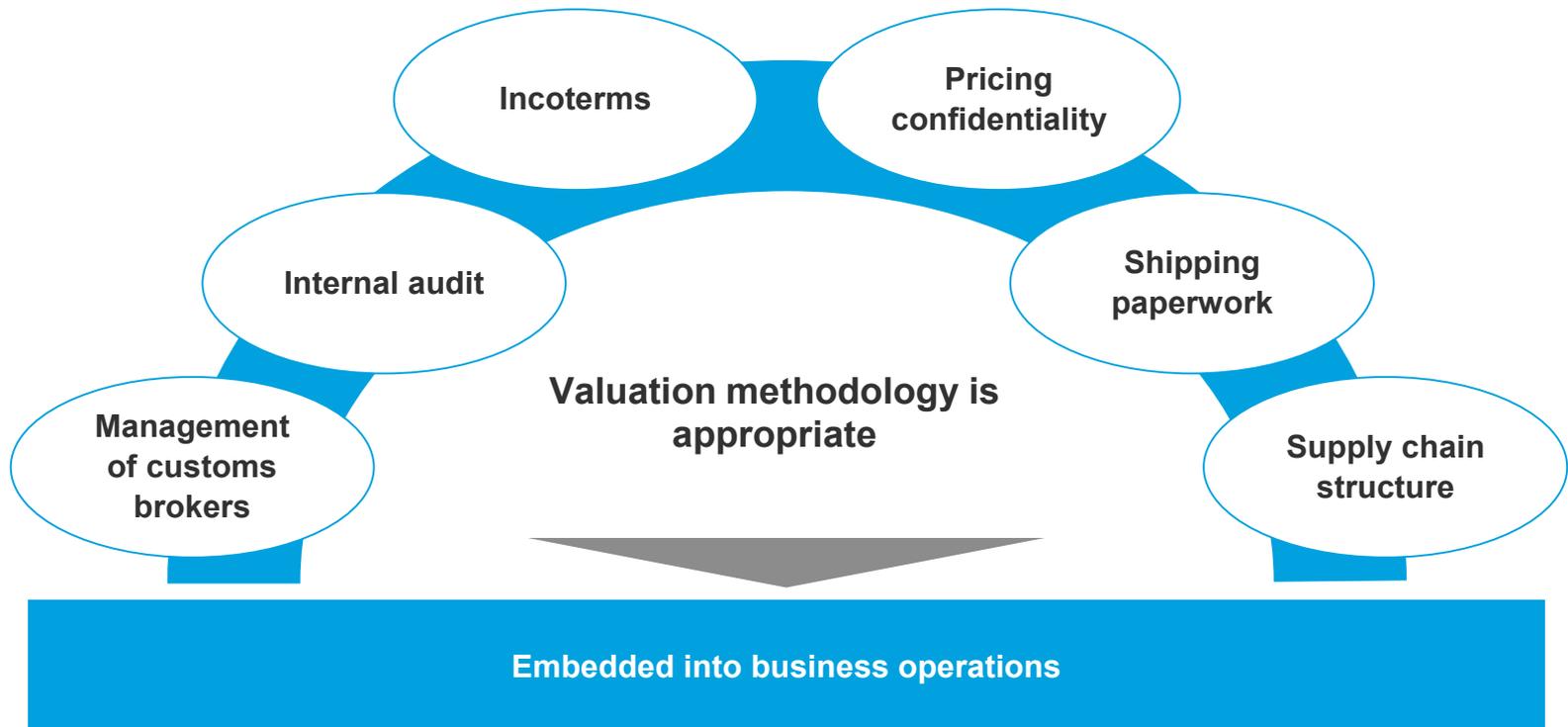
The following must be added to the value for customs purposes if they are not included in the transaction value:

1. Commissions and brokerage
2. Containers and packaging
3. Assists
4. (Some) Royalties and licence fees
5. Proceeds
6. International Transportation Costs

Any addition to the price must be based on objective and quantifiable data if this cannot be obtained then they cannot be valued under Method 1, the Transaction Value, and therefore an alternative WTO method should be considered by the relevant Customs Authorities

# Customs valuation

## Practical considerations



New legislation

# New legislation = New challenges

## Background

The UCC represents a recast of the European Union's basic customs law:

- A recast of the Modernised Customs Code (MCC);
- Adopted on 10 October 2013 in Council Regulation (EU) 952/2013;
- Framework regulation for customs rules and procedures.

## Next steps

- Implementation **due 1<sup>st</sup> May 2016** once the Delegated and Implementing Acts (implementing provisions) are agreed;



- Loss of First Sale for Export customs valuation (transitional period until 2017);
- Changes to the way royalties are assessed for inclusion in the customs value.

# Focus on...First Sale for Export

**Transaction values for customs purposes requires that goods in question are 'sold for export'**

**The transaction value does not require the sale to take place in the country of exportation, what is required is that the sale involves the international transfer of goods**

**Where there are multiple sales prior to importation most customs administrations take the position that the last sale is the only sale and no earlier sale can be used**

**No longer applicable under the new legislation**

**Wording in old & new code: 'Transaction value is price "when sold for export"'**

**New wording in IA: The transaction value is based on "...the sale occurring immediately before the goods were brought into that customs territory."**

# Focus on...Royalties

## Royalties – implicit condition of sale

Currently, the very basic requirement as to whether or not a royalty fee is dutiable are that:

1. Does it relate to the imported goods; and,
2. Is it paid as a condition of sale of those imported goods?

Under the UCC, Royalties & Licence Fees will generally be considered to be paid as a condition of sale of the goods irrespective of the relationship between the buyer/seller and should therefore be included in the customs value.

*'The Commission remain firm in their position and will remain unchanged'*

# Royalties under the UCC

## Trademarks

### CCIP Article 159

A royalty of licence fee in respect of the right to use a trade mark is **only to be added** to the price actually paid or payable for the imported goods, where:

- the royalty or licence fee refers to goods which are resold in the same state or which are subject only to minor processing after importation.
- the goods are marketed under the trade mark, affixed before or after importation, for which the royalty or licence fee is paid, and
- the buyer is **not free to obtain** such goods from other suppliers unrelated to the seller.

### UCC- IA Article 136 (Point 3)

Royalties and licence fees are considered to be paid as a condition of sale for the imported goods when **any** of the following conditions is met:

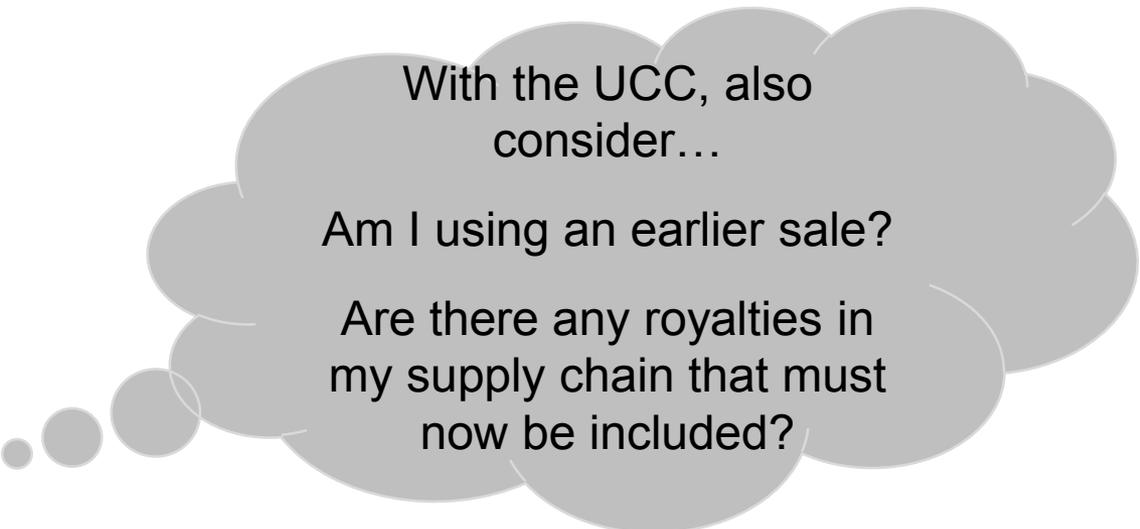
- the seller or a person related to the seller requires the buyer to make this payment;
- the payment by the buyer is made to satisfy an obligation of the seller, in accordance with contractual obligations;
- the goods cannot be sold to, or purchased by, the buyer without payment of the royalties or license fees to a licensor.

Focus across taxes

# Customs valuation & transfer pricing

## Considerations

1. Is the transfer price appropriate for the basis of the customs value for duty?
2. Are adjustments considered from a customs duty perspective?
3. What are the rules regarding the treatment of adjustments?
  - Periodic / scheduling etc.
4. Can you prove that the relationship did not affect the price and that the customs value is not arbitrary?
5. Has the treatment of certain elements been considered, for example:
  - Allocation of profit;
  - Royalties;
  - Assists; and
  - Buying commissions.



With the UCC, also consider...

Am I using an earlier sale?

Are there any royalties in my supply chain that must now be included?

# Customs valuation & transfer pricing

## Additional considerations around BEPs

Promote greater transparency

Certain supply structures will be vulnerable under BEPs with PE risk

Information exchange between countries

More rigorous transfer pricing documentation – robust, fair, in line with guidance

In summer budget 2015, £800m funding promised for HMRC to tackle evasion and non-compliance

Identification of an appropriate transaction for customs valuation purposes

Identification of all the cost elements that must be included in the customs value (or could be excluded)

Increased risk that a pricing adjustment will trigger a customs audit and vice versa.

Increased risk that adjustments/audits in one country will trigger similar in others

# Summary

# Customs valuation in summary

Important in terms of both cost reduction and compliance

It should be part of a customs strategy, led from the top

Strong links with transfer pricing, but there is no formal alignment or merger of methodologies

Upcoming UCC includes changes to First Sale For Export and the way royalties are assessed

Likely to be the subject of increased focus as a result of initiatives such as BEPs as well as HMRC's mandate to increase focus on evasion and non-compliance



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