Transfer Pricing and Customs Valuation
A coordinated approach to related party pricing
Your challenge: Managing the disconnect between tax and customs rules

The days of blindly using transfer prices as a basis for customs values are gone. In today's enforcement-focused regulatory environment, effectively managing the pricing of cross-border, intercompany transfers of tangible goods and properly declaring dutiable royalty payments to customs authorities requires an understanding of the differences and overlap between transfer pricing and customs valuation rules. For importing taxpayers, attention to this area has become an imperative as the enforcement of longstanding related party customs valuation rules has substantially increased, and targeted assessments by the authorities are on the rise.

In this environment, importing taxpayers must address not only transfer pricing requirements, but also the customs-related requirements associated with royalties and reliance on transfer prices as a basis for customs value declarations. In many countries, relying on transfer pricing policies and documentation prepared in accordance with tax laws alone is not sufficient to satisfy the customs authorities that those transfer prices are acceptable from a customs perspective. Many customs authorities will reject the use of transfer prices as a basis for customs values if they are not properly supported under the customs regulations, which differ significantly from tax regulations governing related party pricing. Also, many taxing authorities can penalize importers for undeclared royalty payments that should have been included in declared customs values.

Assuming without knowing whether transfer prices provide an acceptable basis for customs values is risky

Overlooking the customs implications for using related party prices as a basis for customs value, or failing to report to the customs authorities dutiable royalty payments and retroactive transfer pricing adjustments that impact the cost of goods sold, may often lead to inconsistent results. Such behaviors may also trigger targeted inquiries, audits, and potential penalties by both the taxing and customs authorities. In some countries, failing to report changes to customs values triggered by transfer pricing adjustments can yield negative tax consequences through the disallowance of the portion of the corporate tax deduction that is tied to an inventory cost basis that exceeds customs values, as well as penalties from the taxing and customs authorities.

The way forward: Understanding your customs value position

To address these issues, importing taxpayers should understand each customs authority’s requirements in countries where the business is acting as the importer of tangible goods purchased from related foreign suppliers based on transfer prices. Local interpretations and enforcement may vary, but many jurisdictions have similar approaches for determining whether a taxpayer’s transfer price provides an acceptable basis for customs values, as well as whether intangible royalty payments associated

Deloitte’s Related Party Customs Valuation Country Guide, The Link Between Transfer Pricing and Customs Valuation, updated annually, is one of the most broad-based and authoritative guides of its kind. It compiles essential information regarding the customs-related requirements and implications of related party pricing and retroactive transfer pricing adjustments in numerous jurisdictions around the world. For more information and a copy of the guide, please visit: The Link Between Transfer Pricing and Customs Valuation – 2014 Country Guide.
with imported tangible goods must be included in customs values. Taxpayers that import from affiliates should also consider analyzing the applicable customs regulatory requirements in countries where they are importing at the same time that they set and adjust transfer prices and plan royalties so they can satisfy both tax and customs requirements, avoid the disallowance of corporate tax deductions, and manage the risk of incurring penalties.

In most countries, transfer pricing documentation alone will not sufficiently support an importer’s customs position.

Our approach: Bridging the gap between tax and customs requirements

Deloitte’s Customs & Global Trade and Transfer Pricing practices can help your organization analyze and document your local and global positions related to the complex transfer pricing and customs requirements that apply to your cross-border transfers of tangible goods and the payment of royalties. Deloitte’s global network of member firms provides integrated services to assist you in:

- Developing transfer pricing policies and preparing transfer pricing studies and documentation that consider applicable customs valuation requirements
- Analyzing and planning for the customs implications of transfer pricing adjustments and royalty streams
- Analyzing related party customs value positions in jurisdictions around the globe
- Documenting your customs position in a manner that supports the acceptability of transfer prices as a basis for customs value and that meaningfully speaks to and addresses applicable customs tests and requirements
- Reporting to the customs authorities customs value corrections triggered by retroactive transfer pricing adjustments
- Preparing duty refund submissions on downward adjusted customs values in countries that allow refunds
- Joining and effectively participating in provisional customs value programs in countries that have them so you can proactively address transfer pricing adjustments and the risk of penalties
- Identifying and assisting you with implementation process improvements to effectively address compliance with tax and customs regulations governing related party transactions

When planning for royalties, achieving a desired tax result without considering the customs implications of royalty payments may lead to overlooked customs value declarations and result in customs penalties that might offset tax benefits.

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To learn why so many multinational companies trust Deloitte Tax to help them focus on defining and supporting their transfer pricing and customs valuation positions, please contact one of our below specialists:

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