

World Trade Week 2009

“Translating Global Volatility Into Profit”

Tax & Transfer Pricing

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Agenda

- Income Tax Issues for Exporters
- Transfer Pricing
- Customs and International Trade

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Income Tax Issues

Direct Export Sales to Foreign Consumers

- **Local Country Presence**
 - Internal sales function
 - Third party sales agents or distributors
- **Transaction Terms**
 - Title transfer
- **Availability of Treaty Protection**
 - Permanent Establishment
- **Export Benefits**
 - Domestic International Sales Corporation
 - Domestic Manufacturing Deduction

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Export Sales to Related Foreign Distributors

- **Local Tax Positions of Foreign Subsidiary**
 - Capitalization
 - Local tax holidays/benefits
- **Eligibility and Impact of Deferral**
 - Anti-Deferral Regimes
 - Loss utilization
 - Repatriation
- **Transfer Pricing**
- **Transaction Terms**
- **Export Benefits**

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Mitigating Double Taxation

- **US Foreign Tax Credit Regime**
 - **Eligibility of foreign taxes as credits**
 - **Income taxes**
 - **Withholding taxes**
 - **Indirect taxes**
 - **Direct and indirect foreign tax credits**
 - **Annual foreign tax credit limitation calculation**
 - **Impact of domestic or foreign losses**

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Transfer Pricing Issues

Regulatory Overview

- **Internal Revenue Code Section 482**
 - Specific application to the US
- **The OECD (i.e., Organization for Economic Cooperation and Development) Transfer Pricing Guidelines**
 - Conceptual basis for most other jurisdictions
- **The tax authorities generally have the power to allocate gross income, deductions, credits, or allowances between or among related entities if true taxable income is not reported**

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Application to Intercompany Transactions

- Sales of tangible property
- Licensing of intangible property
- Provision of intercompany services
- Extension of financial arrangements
- Cost-sharing arrangements

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Pricing Support

- Contemporaneous Documentation
 - Functional Analysis
 - Selection of Best Pricing Methodology
 - Comparable Transaction Analysis
- Dealing with the IRS
 - Tier 1 Audit Issue
 - 30 day response period
 - Additional penalties assessable based on non-compliance
- Specific requirements vary in each jurisdiction
 - Competent Authority Process

Customs and International Trade Issues

Relationship between Indirect Taxes and Transfer Pricing

- **Transfer Pricing Methods:**

- CUP (Comparable Uncontrolled Price)
- Resale price method
- Cost plus method
- Profit Split (CPM-Comparable Profits Method and Residual Profit Method)
- TNNM (Transactional Net Margin Method)

- Method results in an Arm's-Length Price which is then used by company

- **Customs valuation method:**

- Transaction value

Is this "arms length price" acceptable for Customs & will they accept Transfer Pricing studies?

Transfer Pricing Adjustments

- **Inter-company Transfer Price Adjustments:**

- Retroactive transfer price increase = potential customs value increase
- Retroactive transfer price decrease = potential customs value decrease
- The key questions to ask when a transfer pricing adjustment is made to the value of the goods (either up or down) are:
 - Do local Indirect Tax authorities require reporting of the adjustment?
 - Is the importer liable to pay additional duties and VAT?
 - Can the importer obtain refunds of duty or VAT?

Managing risk – Other Indirect tax valuation issues

- Generally, customs duties and VAT are imposed as the goods are imported into a country. However, without proper planning, certain other payments may also be subject to customs duties and VAT.
- **Royalty payments** – may be subject to customs duties & VAT
- **Cost Sharing Agreements/Management Fees/“Indirect Payments” to the Seller** – payments may be treated as subject to customs duty & VAT

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How Do We Use These Tax Issues to Create Profit?

- **Managing Exposure and Tax Surprises**
 - Consider Likelihood of another deferral of FIN 48
- **Reducing Your Overall Effective Tax Rate**
 - Reduce US or Local Country Tax
 - Defer US Tax
 - Maximize value of Foreign Tax Credits
 - Identify Refund Opportunities for Indirect Credits

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