税务快讯
TCCV 案例研究 14.2——根据《估价协定》条款 1.2(a)运用转让定价报告对关联交易进行审查

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2017 年 10 月 30 日，世界海关组织（WCO）海关估价技术委员会（Technical Committee on Customs Valuation，以下简称 TCCV）发布案例研究 14.2 “根据《WTO 估价协定》条款 1.2(a)运用转让定价报告对关联交易进行审查”（以下简称“案例研究 14.2”）。

TCCV 案例研究属于世界海关组织的估价指导性文件，为各国海关对跨国公司转让定价的审查提供指导意见。值得关注的是，该案例是中国海关参与国际海关估价规则制订，为世界海关估价领域贡献的第一份正式文件。该案例对广大进出口企业，尤其是在华进行全球贸易的企业有重要的借鉴意义。

案例概要

在案例研究 14.2 中，海关参考“再销售价格法”的转让定价报告及其他相关信息，对某奢侈皮包进口的成交价格是否受到买卖双方特殊关系的影响进行分析。

案例背景

- I 国的进口商 ICO 与 X 国供应商 XCO 存在特殊关系。
- 进口商 ICO 是有限责任分销商，主要负责销售进口产品。
- 供应商 XCO 负责制定市场策略、存货水平及 I 国的建议销售价，承担 I 国的市场风险及价格风险。
- 根据集团政策，进口商 ICO 以“再销售价格法”（Resale Price Method）作为定价方法，依据在 I 国的建议销售价，扣除 ICO 的预计毛利，以及进口关税确定进口价格。

- 海关审核发现，在调查期间 ICO 的实际销售毛利高于其预计毛利。

案例分析及结论

在缺乏《WTO 估价协定》中所指的“测试价格”的情况下，海关根据条款 1.2(a)对“货物的销售环境”进行审查时借鉴了 ICO 的转让定价报告。该份报告运用了经合组织转让定价指南中的再销售价格法（Resale Price Method），分析显示 ICO 的实际毛利高于 8 家非关联交易可比公司独立交易下的毛利值域区间。

根据转让定价报告，ICO 未承担显著风险并使用有价值的无形资产，8 家可比公司承担的职能风险与其类似，且进口货物属于可比货物。

通过审核，海关认为 ICO 进口的奢侈皮包定价政策不符合行业通常惯例，因而 ICO 申报的进口货物成交价格受特殊关系影响，应当实施海关估价，对其进口完税价格进行调整。

德勤评论

海关估价与转让定价的相互联系与影响一直是热点话题。2016 年开始，中国海关要求进口商在进口申报时，确认其进口货物申报价格是否受到关联关系的影响。虽然海关估价和转让定价方法十分相似，且均出于审核价格独立性的目标，然而基于法律框架的不同，海关估价与转让定价的方法实施与关注视角等都有一定差异。为所得税目的准备的转让定价同期资料，能在多大程度上被用以佐证进口货物申报价格是否受到关联关系的影响，一直是跨国企业面临的困惑。

近年来，世界海关组织在此领域进行了积极探讨，从 2015 年起颁布了《世界海关组织：海关估价与转让定价指南》及一系列案例研究（包括本次案例研究 14.2），为企业判断特殊关系是否影响成交价格提供了技术指引。

结合案例 14.2 与我们对中国海关估价的实践观察，以下技术细节值得引起中国进口商的关注：

转让定价方法

在目前转让定价同期资料的实践中，企业使用交易净利润法（TNMM）仍占较高比例。但在国内海关估价实务中，从海关角度借助转让定价报告审查关联交易的销售环境时，海关往往更偏好使用再销售价格法的转让定价报告。这是因为与所得税角度出发的转让定价调查相比，海关审价更为关注销售进口货物的毛利水平，而实践中不少使用交易净利润法的转让定价报告主要关注于净利润水平，缺少足够信息以支持海关对毛利进行准确分析。

货物可比性

就所得税转让定价实践而言，在可比性分析时通常较关注企业职能、风险的可比性。但海关在运用转让定价报告审查关联交易时，进口货物的可比性同样重要。这也是由于与转让定价分析相比，海关审价更着眼于货物交易，因此对货物的可比性有较高的要求。

综上，希望借助转让定价报告向中国海关论证其进口货物价格合理性的进口企业应结合上述因素，对其转让定价报告等相关资料进行适当的完善和改进以适应海关审价的需要。

另外需要注意的是，案例研究 14.2 中有限责任进口商所获得的高毛利最终被海关归因为进口价格偏低。实践中，从事关联进口，毛利率较高的有限责任分销商所获得的高毛利，其成因可能较为复杂。建议面临类似情形的进口商应积极考虑对高毛利的贡献因素（例如当地市场环境等）进行定性及定量分析并举证，以避免其所获得的高毛利被不当地归因于进口价格偏低而导致海关完税价格调整。

作者：

上海

高立群
合伙人
+86 21 6141 1053
ligao@deloitte.com.cn

张晓洁
总监
+86 21 6141 1113
dozhang@deloitte.com.cn

深圳

马巍巍
经理
+86 755 3353 8751
shelma@deloitte.com.cn

如您有任何问题，请联系德勤团队：

亚太区海关与全球贸易服务卓越服务中心领导人
香港
马伟廉
合伙人
+852 2852 5668
wimarshall@deloitte.com.hk

海关与全球贸易服务全国领导人
香港
展佩佩
合伙人
+852 2852 6440
sachin@deloitte.com.hk

华北区
北京
周翊
合伙人
+86 10 8520 7512
jchow@deloitte.com.cn

华东区
上海
高立群
合伙人
+86 21 6141 1053
ligao@deloitte.com.cn

华南区
广州
张少玲
合伙人
+86 20 2831 1212
jazhang@deloitte.com.cn

华西区
重庆
汤卫东
合伙人
+86 23 8823 1208
ftang@deloitte.com.cn

Tax Newsflash
Technical Committee on Customs Valuation Issues Case Study on Transfer Pricing and Customs Valuation

The Technical Committee on Customs Valuation (TCCV) of the World Customs Organization (WCO) published a new case study on 30 October 2017 that analyzes how transfer pricing documentation should be used when examining related party transactions for customs valuation purposes to determine whether the price of imported goods was influenced by the relationship between the buyer and the seller. The document, entitled, "Case Study 14.2 - Use of Transfer Pricing Documentation When Examining Related Party Transactions Under Article 1.2 (a) of the (WTO Valuation) Agreement," still must be approved by the WCO.

The TCCV is a committee comprised of Customs authorities from members of the World Trade Organization (WTO) administered by the WCO under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 to ensure uniformity in the interpretation and application of the agreement. The TCCV's pronouncements are considered important guidance to Customs authorities worldwide, although they do not have binding effect on any WTO member.

Case Study 14.2 is the first formal WCO instrument that is based on a submission by China, which demonstrates Chinese Customs' contribution to, and participation in, the development of international standards for customs valuation practice. Case Study 14.2 provides an important reference and guidance for importers and exporters conducting cross-border trading businesses in China.

Summary of Case Study 14.2

Case Study 14.2 illustrates a scenario where Customs takes into account information provided in a company's transfer pricing report in which the company used the resale price method (RPM) as its transfer pricing method, as well as other information, in determining the customs value of goods. Specifically at issue in the case study was whether the import price of luxury bags was influenced by a special relationship (i.e. a related party relationship) between the buyer and the seller.

Background

- The parties are XCO, a company in Country X that sells luxury bags to ICO, a limited risk distributor in Country I. XCO and ICO are related parties.
- XCO establishes the market strategy, advises on the level of inventory to be maintained, establishes the recommended sales price of the luxury bags sold by ICO, and invests in developing intangible assets associated with the bags. As a result, XCO assumes both the market and price risks in relation to the sales of the bags in Country I.
- ICO's transfer pricing policy demonstrates that the import prices of all luxury bags are determined using the RPM, calculated based on the resale price and the targeted gross margin of ICO. According to the transfer pricing report which used the RPM, the importer's gross margin is compared to the gross margin of benchmarked companies

engaged in similar functions and risks, but that carry out transactions with unrelated parties (eight comparables were used in the case study).
- The Customs authorities note during a post-clearance audit that ICO's actual gross margin is higher than the targeted gross margin stated in its transfer pricing policy.
- On the basis of the information in the transfer pricing report, the Customs authorities concluded that the declared import price was not settled in a manner consistent with the normal pricing practices of the industry and thus had been influenced by the relationship between the buyer and seller. As a result, the Customs value must be determined by the application of alternative methods of appraisal.

Analysis and conclusion

For Customs valuation purposes, the WTO Agreement on Customs Valuation is applied in determining the Customs value for imported goods. The case study provides a good example of how a transfer pricing study may be used by the customs authorities when examining related party transactions.

If the buyer and seller are related parties, the agreement provides two ways for establishing the acceptability of the transaction value if the Customs authorities have doubts about the price: (1) looking at the circumstances surrounding the sale to determine whether the relationship influenced the price; or (2) the importer demonstrates that the value closely approximates one of three "test values."

The importer in the case study did not provide test values, so the Customs authorities examined the circumstances surrounding the sale by using ICO's transfer pricing report, which was prepared based on the RPM in the OECD's Transfer Pricing Guidelines. An analysis of the transfer pricing report shows that ICO's actual gross profit was higher than the arm's length inter-quartile range of the selected eight comparable companies.

According to the transfer pricing report, ICO does not employ any valuable, unique intangible assets or assume any significant risks. The functional analysis indicates that the eight comparable companies import comparable products from country X, perform similar functions, assume similar risks and do not employ any valuable intangible assets, just as ICO.

After examining the circumstances surrounding the sale between ICO and XCO by reviewing the transfer pricing report, Customs concludes that the import price is not established in a manner consistent with the normal pricing practices of the industry and thus is influenced by the special relationship between the buyer and the seller. Therefore, the transaction value cannot be accepted and the Customs will reappraise the dutiable value to collect the underpaid import taxes.

Comments

The relationship between Customs valuation and transfer pricing has long been an area of concern for businesses. Customs valuation and transfer pricing use similar methodologies to establish an arm's length transaction price or a price that is not influenced by a special relationship between a buyer and a seller, but the two methodologies contain differences in certain areas such as the legal framework, implementation approach, etc.

While the transaction value generally is accepted for Customs valuation, the Customs authorities have the right to initiate post-clearance audits on the price of dutiable goods, review whether the price has been influenced by any special relationship between the buyer and the seller, and if so, reappraise the dutiable value. In the case of China, the Customs authorities have stepped up their examinations of related party transactions in recent years; and as from 2016, importers are required to declare whether the import price is influenced by the special relationship (if one exists) between the buyer and the seller in each declaration of import into China.

To ensure a more consistent approach by the tax and Customs administrations and reduce compliance burdens, the businesses community has been advocating that Customs authorities use information contained in transfer pricing documentation prepared for income tax purposes when examining related party transactions and give consideration to the impact of transfer pricing adjustments on the Customs valuation.

The WCO has been actively exploring this area and, in 2015, released the "WCO Guide to Customs Valuation and Transfer Pricing," followed by a few case studies (including Case Studies 14.1 and 14.2) that provide technical guidance to Customs and businesses on how to utilize transfer pricing information for Customs valuation purposes.

Based on Case Study 14.2 and our observation of practices by Chinese Customs, the following issues are worth noting:

Transfer pricing method

The transactional net margin method (TNMM) is the most commonly used method in transfer pricing reports. However, Chinese Customs favors the RPM when using transfer pricing reports to examine related party transactions because Customs normally focuses more on an importer's gross margin rather than its net profit. According to Chinese Customs, many transfer pricing reports that use the TNMM generally lack sufficient information for Customs to evaluate the reasonableness of an importer's gross margin.

Comparability of goods

When selecting comparable companies, a transfer pricing analysis on imports of tangible goods often focuses on the similarities between the functions and risks assumed by the tested party with those of the comparable companies, and the analysis may be less focused on the differences between the tangible goods imported by the tested party and those imported by comparable companies. However, Customs valuation is much stricter on the comparability of goods, with the result that a company with similar functions and risks but that imports goods that are different from the goods imported by the tested party may not be considered a comparable by Customs.

Companies that intend to use transfer pricing information to justify an import price with Customs should consider the above factors when preparing their transfer pricing reports and/or adapting reports for Customs valuation purposes.

Furthermore, the Customs administration in Case Study 14.2 attributes the higher gross profit earned by the importer to the lower import price as a result of the influence of the special relationship. In practice, however, a higher gross profit of a limited risk distributor can result from a number of factors (such as the local market environment). Limited-risk importers with higher gross profits may wish to conduct a comprehensive analysis to identify whether these factors exist and to quantify their contributions to manage the potential risk from a Customs valuation perspective.

Authors:

Shanghai
Liqun Gao
Partner
+86 21 6141 1053
ligao@deloitte.com.cn

Dolly Zhang
Director
+86 21 6141 1113
dozhang@deloitte.com.cn

Shenzhen
Shelly Ma
Manager
+86 755 3353 8751
shelma@deloitte.com.cn

If you have any questions, please contact:

Asia Pacific Customs & Global Trade Centre of Excellence Leader
Hong Kong
William Marshall
Partner
+852 2852 5668
wimarshall@deloitte.com.hk

Customs & Global Trade National Leader
Hong Kong
Sarah Chin
Partner
+852 2852 6440
sachin@deloitte.com.hk

Northern China
Beijing
Yi Zhou
Partner
+86 10 8520 7512
jchow@deloitte.com.cn

Eastern China
Shanghai
Liqun Gao
Partner
+86 21 6141 1053
ligao@deloitte.com.cn

Southern China
Guangzhou
Janet Zhang
Partner

Western China
Chongqing
Frank Tang
Partner

+86 20 2831 1212
jazhang@deloitte.com.cn

+86 23 8823 1208
ftang@deloitte.com.cn