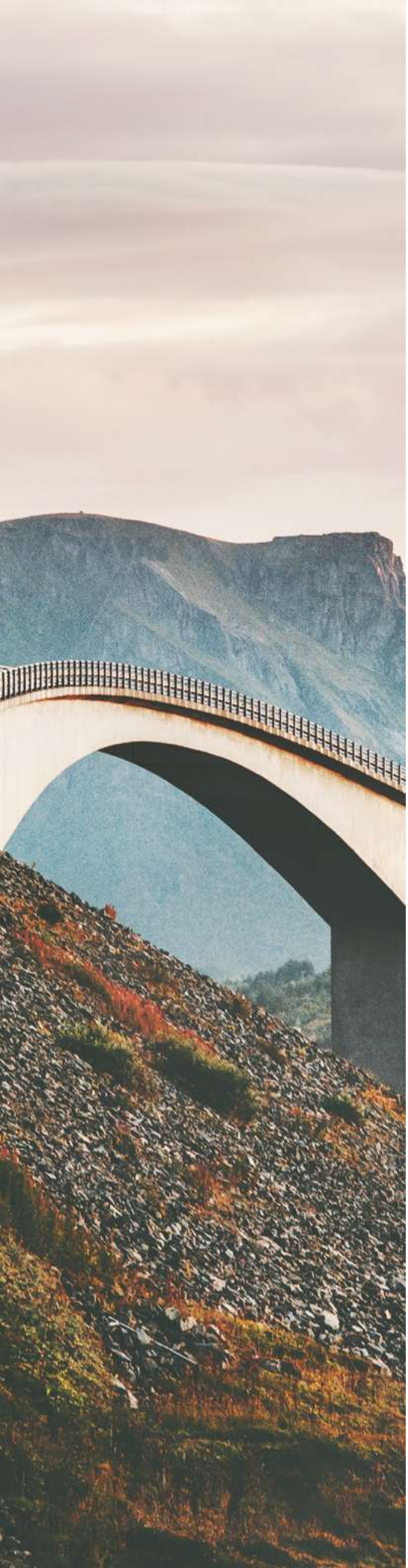
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The Link Between Transfer Pricing and Customs Valuation

Eighth Edition Country Guide



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Foreword

The Link Between Transfer Pricing and Customs Valuation—Eighth Edition Country Guide is one of the most broad-based and authoritative, periodically updated, 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.

As with past publications, the information contained herein has been provided by local country specialists from Deloitte's* global network of Global Trade Advisory (GTA) practitioners.** With over 850 practitioners worldwide, Deloitte's global GTA practice provides services to importers and exporters in business sectors and industries around the world.

What's new in the Eighth Edition?

The Link Between Transfer Pricing and Customs Valuation—Eighth Edition Country Guide includes 59 contributing countries with responses that have been updated to address on-going, country-specific regulatory and practice changes, as well as other advancements and events impacting related party customs valuation.*** Two new questions have been added, providing further details on critical areas of increasing interest to many importers. The first targets the identification of those methodologies and evidence that local customs authorities find persuasive when determining the acceptability of related party values. The second seeks to identify the value-added tax ("VAT") cash-flow or recoverability impact arising from transfer price adjustments that result in an increase in VAT due.

Further, recent trends and developments include:

- 39 of 59 countries have indicated that related party customs valuation remains a high-focus enforcement area.
- In an increasing trend, 18 of 59 countries have indicated that the customs authorities have published and made publicly available specific guidance on the treatment of related party prices and/or transfer pricing adjustments. This includes Australia, Austria, Belgium, Brazil, Canada, Colombia, Croatia, Denmark, Germany, Israel, Italy, Netherlands, New Zealand, Singapore, South Africa, the United Kingdom, the United States, and Vietnam. Also, 2 of 59 countries—Argentina and the UAE—anticipate such guidance to be published soon.
- As in previous years, most customs authorities do not view the existence of an Advance Pricing Agreement ("APA") or transfer pricing studies alone as being sufficient to support the use of related party transaction value. 54 of 59 countries indicated more evidence is needed, while 47 of 59 countries noted that transfer pricing studies and APAs, although not dispositive, will typically contain some information that is useful for supporting the transaction value method.
- In a continuing trend that remains unchanged from past years, the types of information that customs authorities will consider as supportive of the acceptability of transfer pricing as the basis for transaction value remains varied. More countries are indicating that their customs authorities are reviewing reference prices in their internal customs databases, as well as expanding the types of documents they are seeking to review, including commercial documentation supporting the business transaction, invoices, and agreements.
- The number of countries recommending the preparation of an advance independent customs study to support related party pricing has increased to 30 of 59 countries.
- In an increasing trend of cooperation between the customs and tax authorities, 26 of 59 countries indicated that it may be possible to get both the customs and tax authorities to agree on the methodologies to arrive at an acceptable price for corporate tax and customs purposes.
- In a relatively stable trend, 17 of 59 countries have indicated that prospective transfer pricing adjustments will likely invite scrutiny by the customs authorities, while an additional 18 of 59 countries have noted that increased scrutiny may be possible.

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** The Link Between Transfer Pricing and Customs Valuation—Seventh Edition Country Guide is intended as a general guide only. Its application will depend on the particular circumstances involved. While all reasonable attempts have been made to publish accurate information, the rules underlying the information provided may change, which may impact the accuracy of this communication. None of the DTTL member firms or their related entities is rendering professional advice or services by means of this publication. No entity in the Deloitte organization shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

*** The World Trade Organization Customs Valuation Agreement defines "related parties" as: (a) officers or directors of one another's businesses; (b) legally recognized partners in business; (c) employer and employee; (d) any person [that] directly or indirectly owns, controls or holds five (5) percent or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) members of the same family.



- In another increasing trend, 35 of 59 countries indicated that VAT only fines, penalties, or interest could apply when making a VAT-related adjustment due to a customs value increase or decrease.

Finally, changes occurring at the global and regional levels continue to significantly influence the management and enforcement of related party customs valuation along with other trade-related issues:

- From a broader policy perspective, the international trade world continues to see an environment of new challenges and uncertainty stemming from, among other things: geopolitical issues and national political policies that have given rise to increasingly protectionist trade policies; changes in global tax laws such as the so-called "Pillar 2" rules that are driving companies to reevaluate and change their global tax structures; a rise in carbon and other climate-related border taxes; new import enforcement measures related to the identification of forced and child labor within supply chains; as well as, the continuously growing focus by government authorities and traders worldwide on Environmental, Social, and Governance initiatives. For customs and other government authorities, this environment has driven an increase in tariffs and other trade measures, more bilateralism to manage policy positions within regions, an increase in the information that must be collected and maintained on imported goods, and a need to update product shipping and entry practices. For global companies, they must continue to revisit global tariff management and sourcing strategies, as well as implementing strategies to track supply chains and better manage trade data more than ever.

- As global trade developments continue to dominate strategy discussions within companies around the world, and as supply chains, tax structures, and the scrutiny of trade transactions evolve in light of these global trends, the need for customs value management strategies for related party transactions that consider both tax and customs perspectives is becoming increasingly more apparent to many global companies. Also, the move towards the electronic filing of import declarations and the continuing trend towards automation-enabled trade management creates new opportunities and challenges with respect to accessing, correcting, and managing trade data. This becomes particularly complex with respect to customs values that are based on transfer prices as they are systematized at the time of importation, but may change post-importation, often making related party customs valuation processes challenging to design and automate during systems implementations and upgrades.

- Another global trend stems from the use of "single window" import declaration systems and initiatives, which continued to increase around the world. This sets the stage for increased data coordination activities between exporting and importing countries to compare the values declared on exports to those declared on imports. In turn, greater diligence is becoming required of global companies in managing their related party customs values among other key data points driving the calculation of duty liabilities.

- Finally, in this era of global companies determining how the power of generative artificial intelligence and machine-based learning fit into their business activities and strategies, so too are worldwide government authorities—including many customs authorities—seeking ways to harness these areas to, among other things, detect data anomalies, enhance their enforcement strategies, and effectively manage vast amounts of data. Growing capabilities by the customs authorities to, for example, more easily run data analytics on key data points such as past and current customs value declarations made by an importer will provide both a challenge and opportunity for global traders to find more evolved ways to manage their cross-border transactions and associated data and declarations, especially as it pertains to related party customs values.

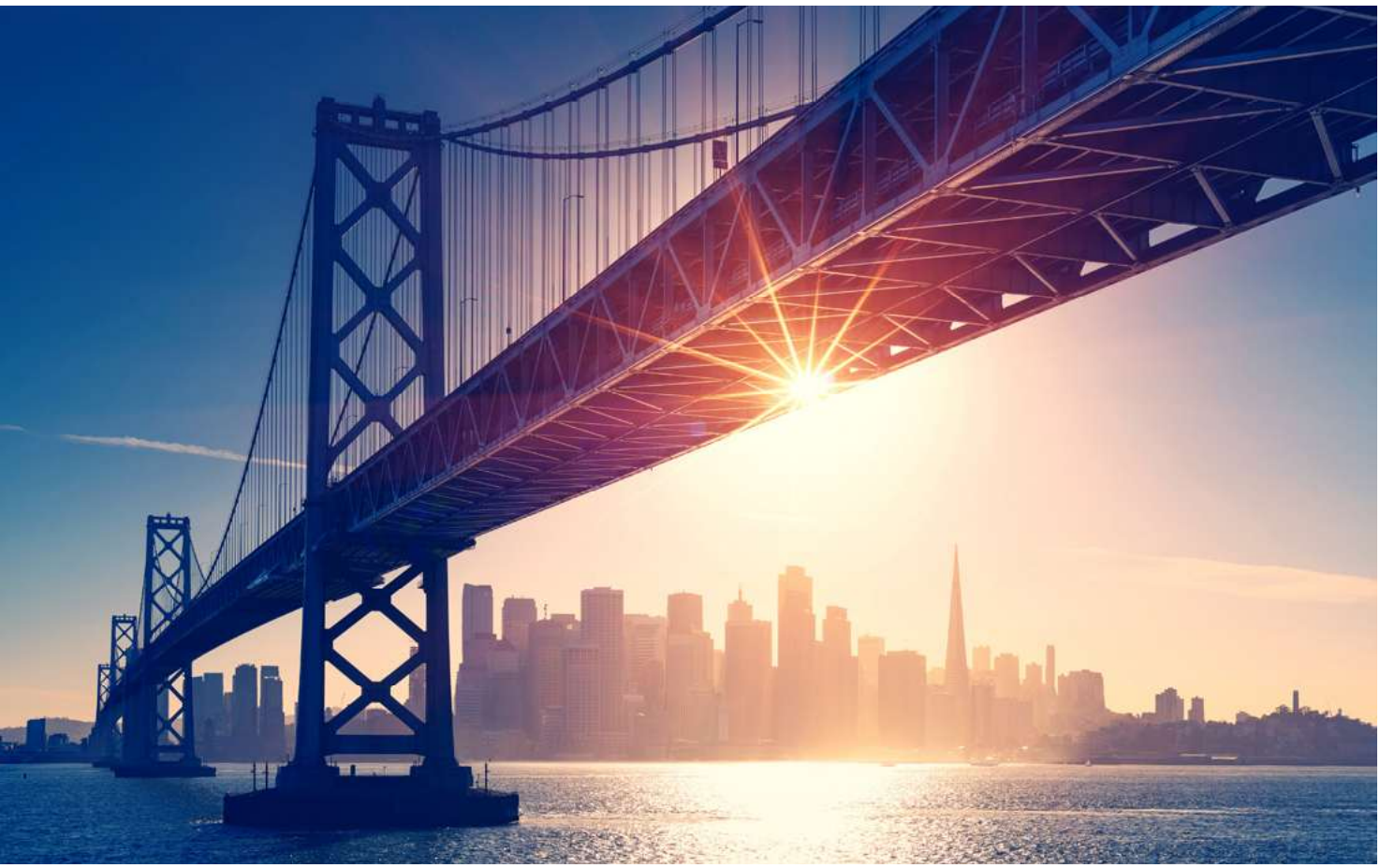


Deloitte global profile

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society, and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories.

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WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994—Related Party Valuation Rules excerpt*

The following is an excerpt from the above-named agreement that sets forth the basic rules pertinent to the use of related party pricing as the basis for customs valuation in countries that are signatories to the agreement.

Part I: Rules on customs valuation

Article 1, paragraph 1: The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8**, provided that...the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.

Paragraph 2:

(a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related...shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates the customs value in sales to unrelated buyers of identical or similar goods at or about at the same time***.... In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).



* Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement), 1868 U.N.T.S. 279, Part I.

** Article 1 is to be read together with Article 8 which provides, inter alia, for adjustments to the price actually paid or payable for elements that are part of the customs value but are not included in the price. Article 8 also provides for the inclusion in the transaction value the value of specified goods or services from the buyer to the seller.

*** Such value is determined under the provisions of Articles 5 (deductive value) and 6 (computed value) when the customs value cannot be determined on the basis of transaction value (under Article 1).

Angola

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method. Note that Angola is not yet a party to an APA.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Transfer pricing reviews are a new and evolving area of focus for the customs authorities. Generally, invoices, contracts, and proofs of payment are acceptable. The customs authorities may require transfer pricing reports. It is recommended to conduct a market analysis that shows that intercompany prices are in line with market prices.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. However, the customs authorities generally prefer to use the circumstances of sale test, and in particular, review related and unrelated party prices that occur at the same commercial level under similar circumstances. They will also consider additional data provided by the parties and customs records.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. However, we are not aware of this happening in practice yet.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, if the importer can provide proof to support the claim. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 5 years from the date of the taxable event. Duty refunds: 1 year from the date of the original payment of duties. If corrections are reported during the customs clearance process, no penalties apply. Penalties always apply if corrections are reported after the time of entry.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes, but only if the disclosure is not voluntary. Penalties depend on several factors. Where adjustments are made, an importer must seek guidance on how to proceed.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Whether the result of increases or decreases in transfer pricing or for other reasons, any adjustment to the customs value must be reported through the "Declaration of Values" form. Importers should seek guidance on how to proceed from the customs authorities if adjustments occur.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction or aggregate, depending on the request of the customs authorities. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional filings are required. An adjustment to import value will automatically result in the assessment of additional taxes, where applicable.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional filings are required. However, a request must be made to obtain a refund of any overpaid taxes.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Penalties of 25% of underpaid VAT plus compensatory interest computed based on a 1% per month rate apply. This can be reduced by filing a voluntary correction. Value decrease: No penalties apply.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Possibly. Additional VAT paid on import may be deducted on the VAT return if the taxpayer has customs documents that demonstrate that the import VAT was correctly paid on taxable activity.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. No set threshold exists. It is recommended that the importer engage in discussions with the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent due to the potential risk that the tax and customs authorities may exchange information and reject/amend either the taxpayer's taxable basis or customs value.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Argentina

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A Possibly. In December 2023, the government proposed a Decree that would allow importers to hold advance consultations with the customs authorities, during which APAs could prove helpful in supporting the transaction value method. However, implementing regulations have yet to be fully defined and are not yet approved.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may perform a "value study" and request information to verify whether the related party price is acceptable. Generally, this includes a review of contracts, price lists, and imports of same or similar goods made at or about the same time as the goods being valued. It is recommended that the importer conduct a test/analysis to confirm the acceptability of the transfer pricing against the customs rules to verify if the price closely approximates unrelated party prices.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A The customs authorities typically compare the declared value with reference prices in their own database.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. There are mechanisms for consulting the customs and tax authorities, but joint consultation is not regulated.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Not yet. If the Decree announced in December 2023 is implemented, the consultations it provides for would be made publicly available. No other guidance exists at this time.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes, if the provisional value system is used, the importer must obtain prior authorization from the customs authorities for the methodology it will apply to adjust customs values. In cases when the importer does not have prior authorization, if an increase in prices is discovered upon audit, the customs authorities may issue a fine that is the greater of 1 to 5 times the loss of duties, taxes, and fees, or 1 to 5 times the difference in the price paid or payable. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes, if customs values are adjusted upward under a provisional value authorization or if value changes result from an audit. In such cases, the customs authorities may require a payment of the loss of duties and taxes/fees in addition to the applicable fine.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes, if the provisional value system is used and prior authorization to adjust customs values is obtained. In cases when the importer does not have prior authorization, if a decrease in prices is discovered upon audit, the customs authorities may issue a fine that is 1 to 5 times the difference in the price paid or payable.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. However, in practice, duty refunds are difficult to obtain. There is no specific request process. A request for duty refunds could trigger additional information requests. Any adjustment request could lead to fines and penalties unless prior authorization is obtained, which is rare.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 5 years from 1 January of the subsequent year. No, there are no specific time limitations for reporting changes without penalty. Reporting any change may trigger penalties unless prior authorization is obtained, which is rare.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes, if prior authorization is not obtained. Fines of 1 to 5 times the tax loss, or the difference in the price paid or payable, may be assessed. Voluntary disclosure does not eliminate these penalties. However, a reduction of 75% of the fine may apply should the importer report the change in customs value within 30 business days of the original customs clearance of the goods.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Absent a prior authorization, which is rarely obtained, a change in customs value resulting from either a voluntary disclosure or an audit usually leads to a self-incrimination procedure for submitting an inaccurate customs declaration. Under this procedure, the importer is required to state the tax payment loss and the applicable fine. Upon receiving a response from the customs authorities, the importer may consent to the charges within 10 business days to mitigate the risk of fines and penalties. The same procedure is required when a change in customs value is the result of a retroactive transfer pricing adjustment.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction. However, aggregate adjustments may be accepted on a case-by-case basis. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A If requested upon audit, additional VAT filings may be required, and additional VAT and other taxes and fees may be due.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A When value decreases are reported, no additional import duties, taxes, and/or related fees filings are required.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: Yes, but the origin will be the customs audit.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. No set threshold exists. However, in practice, a difference of 10% would typically trigger questions regarding the value and result in information requests. This threshold is informal and may vary among different product types.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent because of the potential risk that the customs authorities may discover the discrepancy during an audit. The customs authorities review the inventory basis during an investigation, and if the discrepancy is not justified, the customs authorities may impose penalties depending on the severity of the discrepancy and the company's background with the customs authorities.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Australia

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A As part of a Valuation Advice application, the customs authorities will require the relevant transfer pricing documentation (e.g., APA or transfer pricing study) and evidence that the adjustment was necessary to bring the operating margin into the range outlined in the APA or the transfer pricing study. It is not recommended to proactively conduct any additional testing based on customs arm's length rules. This should only be done if required by the customs authorities.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. Generally, the customs authorities accept the arm's length tests undertaken as part of a transfer pricing study or an APA.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. The importer would apply for a Valuation Advice after an APA has been issued to obtain mutual agreement between the tax and customs authorities.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. "Practice Statement No: B_IND08" provides legislative customs valuation requirements and policies for transfer pricing adjustments.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception when the duty rate is 0. Penalties may apply regardless of whether the change impacts the duty payable.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception when the duty rate is 0. Penalties may apply regardless of whether the change impacts the duty payable.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The request process is the same. In order to claim a refund, each individual import declaration involving a duty refund must be amended. Amendments, however, should only be made based on a Valuation Advice obtained from the customs authorities.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 4 years from the date of the import declaration. There is no time limitation in cases of fraud. Changes to the reported customs value should be reported as soon as possible after the transfer pricing adjustment has been made and settled by the parties. No penalties are imposed unless the customs authority commences an investigation prior to the submission of the disclosure.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. If additional duty is owed: Penalties up to 5 times the amount of duty owed or AUD 93,900 per import declaration, whichever is greater may be imposed by a court on a corporate importer. No interest would apply. If duty is refunded or there is no change in duty owed: Penalties up to AUD 93,900 per import declaration may be imposed by a court on a corporate importer, but no interest would apply. If a voluntary disclosure is made, no penalties would apply, unless fraud is involved.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, a Valuation Advice application or disclosure is filed with the customs authorities to obtain an advance ruling on the change in value. This is the general procedure to report both increases and decreases in value. In the event of customs value changes due to retroactive transfer pricing adjustments, a Valuation Advice application is generally filed.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Disclosures can be made in the aggregate for payments and refunds. If refunds are sought, transaction-by-transaction adjustments are required; whereas, if a payment is due, this can generally be made through a single aggregate payment advice. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. The Valuation Advice process states that a binding ruling remains in place for 5 years and can be used over this period for repeated retroactive customs value adjustments.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional Goods and Services Tax (GST) filings are required, unless an aggregate adjustment is made. Under this arrangement, the customs authorities would issue a payment notice, and the importer would pay the customs authorities the GST amount and claim an input tax credit for that GST amount on its next Business Activity Statement.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional GST filings are required. An adjustment to import value will automatically reduce the reported GST amounts.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. The importer may submit a Valuation Advice to the customs authorities if there is a significant change to the pricing structure, the importer is under increased customs scrutiny, or the importer is seeking approval of a particular pricing structure. Outside of these circumstances, submitting a Valuation Advice is generally not recommended.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes. It is typically a high area of focus and is always examined during an audit of a multinational importer. The customs authorities have reaffirmed that this is a focus area for compliance.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A In practice, no.

Austria

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A There is no exhaustive list. However, the customs authorities generally review invoices, internal accounting records, transfer pricing studies, audit reports, and evidence on the gross margins achieved on sales to unrelated parties. It is recommended that the importer conduct a customs value analysis to demonstrate that the price is adequate to recover all costs plus profit, or that the price was settled in a manner consistent with the pricing practices of the industry or with sales to unrelated buyers.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. The customs authorities will review the circumstances of the transaction to determine its assessment approach.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes, the customs authorities have published ZK-0690, a working guideline on customs valuation that includes comments on transfer pricing adjustments and related party transactions.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, provided that the price change was accounted for in the contract conditions for the sale of goods and the contract was established prior to importation. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 3 years from the date the customs declaration was accepted, 10 years in cases of fraud. Duty refunds: 3 years, with the possibility of an extension in certain cases. No, there are no specific time limitations for reporting a change without penalty.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Administrative fines, penalties, or imprisonment, as well as interest, may apply. Generally, if a voluntary disclosure is made, fines, penalties, or imprisonment may be reduced or eliminated, but late payment interest would still apply.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A There is no set procedure for either an increase or decrease. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A If the importer is fully entitled to a VAT deduction and a correct VAT rate has been applied, no additional actions are required. In all other instances, VAT returns must be amended and any additional VAT owed must be paid.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional VAT filings are required provided that the importer is fully entitled to a VAT deduction. If the VAT deduction is not applicable, the VAT filing must be amended to adjust the amount of import VAT.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Possibly. No deduction is allowed in cases of criminal liability. However, if the importer is entitled to fully deduct input tax on imports, VAT due on import will not be charged.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. However, there is no set threshold or process that would trigger scrutiny from the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No, unless the change in export value impacts the collection of customs duties.

Belgium

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, if related party prices are set in accordance with traditional transfer pricing methods rather than transactional profit methods under the Organization for Economic Cooperation and Development guidelines (i.e., comparable uncontrolled price, resale-price or cost-plus), the customs authorities will typically accept prices with limited query. For all methods, information in transfer pricing studies may still be considered useful. APAs are not available in Belgium.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/ analysis from the transfer pricing analysis)?

A The customs authorities may request transfer pricing agreements, proofs of payment, declarations of accounts stating transfer prices invoiced are the only payments made for the sale, production costs, and information on the margins achieved on goods sold to third parties. An importer can also apply the test values method. In cases involving a chain of transactions, it is important that the value declared relates to the transaction relevant for import clearance. It is recommended to conduct a customs valuation analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A The customs authorities will examine whether the price (1) was established based on pricing mechanisms that can be considered normal for the industry involved, or (2) was based on how the seller establishes its prices for unrelated buyers, or (3) was sufficient to cover costs and profits when compared to the total profit of a seller in sales of goods of the same class or kind. The importer may also provide details on the circumstances of the sale. Additionally, the importer can elect to apply a test values test. In practice, the customs authorities have also compared declared values with available statistical data to assess whether a value is suspiciously low.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. However, this depends on the goodwill of the customs and tax authorities. There is no formal procedure.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. The customs authorities have published administrative clarifications that address customs valuation and related party pricing. These publications also address the treatment of prospective/retroactive transfer pricing adjustments.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. However, an importer must obtain a "customs valuation decision". In practice, an importer can apply for the "simplified declaration" procedure or the "simplified value determination" procedure. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. However, an importer must obtain a "customs valuation decision" before adjusting import declarations. In practice, it can apply for either the "simplified declaration" procedure or the "simplified value determination" procedure. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The process is the same. Applications must be in accordance with the principles of the "simplified declaration" procedure.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: In principle, up to 10 years after the date on which the customs debt was incurred. In practice, typically, 3 years. Duty refunds: Typically, within 3 years of the notification date of the customs debt. However, a refund may be refused if the appropriate declaration correction procedure was not applied.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Criminal sanctions will apply, unless the importer files a voluntary disclosure. Additionally, interest will be charged on the duty owed. The rate of interest on arrears shall be equal to the interest rate as published in the Official Journal of the European Union which the European Central Bank applies to its main refinancing operations, on the first day of the month in which the due date fell, increased by 2%.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A A declaration that is subject to a retroactive transfer price adjustment cannot be spontaneously amended. Adjustments may be made in 2 ways: (1) the simplified declaration procedure allows for the correction of declarations omitting certain data elements by filing a supplementary declaration; or (2) the authorization procedure, or "simplified valuation procedure," requires a specific advance authorization to be granted by the customs authorities. These allow for certain elements that cannot be quantified at the time of clearance to be determined later based on specific criteria and simplifying the determination of amounts forming part of the customs value of goods. Any adjustments must be made within the framework of an advance customs valuation decision. The process is, therefore, different from other value-related corrections.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction. Aggregate adjustments may be accepted in certain ad-hoc cases, e.g., under application of the "simplified value determination" procedure. In practice, disclosures for transfer pricing adjustments are specific and should be reviewed on a case-by-case basis.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. Importers may obtain a company-specific ruling from the customs authorities, notably to use the "simplified value determination" procedure.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A If the importer has an ET 14.000 license to defer the import VAT to the VAT return, the correction must be made in the periodic VAT return covering the month in which the adjustments were made. If the importer does not have an ET 14.000 license, no additional VAT filings are required, and any additional VAT would become immediately payable to the customs authorities.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A If the importer has an ET 14.000 license to defer the import VAT to the VAT return, the correction must be made in the periodic VAT return covering the month in which the adjustments were made. If the importer does not have an ET 14.000 license, no additional VAT filings are required.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes. Penalties of up to 20% of the VAT owed, plus interest of 0.8% per month, may apply if the adjustment is discovered upon audit. If a voluntary disclosure is made, only late payment interest may apply. Value decrease: No.

18 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes, as long as the importer has the right to deduct the import VAT.

19 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, it is recommended that the importer proactively contact the customs authorities to discuss prospective transfer pricing adjustments and to obtain an advance valuation ruling on the requirements for modifying the customs value.

20 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No. However, in practice, the two values should be consistent. There is a potential risk that the tax and customs authorities may exchange information and reject/ amend either the taxpayer's taxable basis or customs values.

21 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No. However individual cases do emerge.

22 Q The Value Added Tax Law does not address the treatment of additional VAT paid due to an increase in the customs value resulting from transfer pricing adjustments.

A No.

Brazil

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs are considered important evidence to support the use of transfer prices as a basis for transaction value. Normative Instruction IN2090/2022 further allows companies to use statements on the calculation of taxable income under transfer pricing rules to support a finding that the price charged between related companies was uninfluenced for customs declarations.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/ analysis from the transfer pricing analysis)?

A The customs authorities may invite importers to submit a customs value declaration and may request contracts, price lists, and accounting registries to support a related party price. They may also contact customs authorities in countries of export for information on the export values declared. Importers should maintain a list of related suppliers and information on the controls implemented to determine the declared customs values, as well as support for related party prices and price adjustments that could trigger the attention of the customs authorities. Normative Instruction IN2090/2022 also allows companies to use statements on the calculation of taxable income under transfer pricing rules as evidence to demonstrate that related party prices are uninfluenced.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Generally, no.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. Normative Instruction IN2090/2022 provides that importers must prove that the price was uninfluenced in accordance with transfer pricing rules.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. There is a risk of fines and penalties in the event that fraud is found or in the event of a customs audit. Further, Normative Instruction IN2090/2022 allows the customs authorities to challenge the correctness or accuracy of declared customs values that are based on the price for goods as determined under domestic transfer pricing legislation and that may have been adjusted retroactively in the last 5 years. In such circumstances, the customs authority may request that the importer provide explanations, documents, or other evidence to demonstrate that the declared value represents the price actually paid or payable for the imported goods and is in accordance with the provisions of Article 8 of the World Trade Organization Valuation Agreement.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A N/A. However, if the customs authorities increase the customs value based on a customs audit, any additional customs duties and taxes owed would be levied.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. The customs legislation does not clearly require importers to report change in customs value due to a post importation transfer pricing adjustment. Reporting changes to the customs authorities raises the risks of fines and penalties.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A N/A

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A N/A

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Possibly. If the customs authorities find that customs values are unacceptable during a customs audit and increase customs values, a fine of 100% of the difference between the declared customs value and the corrected customs value may be applied.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A N/A

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A N/A

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A N/A

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A N/A. However, if the customs authorities increase the customs value based on a customs audit, additional VAT would be assessed.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A N/A. However, if the customs authorities decrease the customs value based on a customs audit, then a VAT credit would automatically result.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: Generally, no. However, a 75% fine on the difference of the federal taxes, including VAT, levied on imported goods, plus interest, would apply in connection with the customs fine.

18 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No.

19 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Possibly. A variation in the customs value of 10% or more could trigger the customs authorities' scrutiny. It is recommended that the importer proactively contact both the tax and customs authorities to discuss the transfer pricing adjustments before a prospective adjustment occurs. This should be evaluated on a case-by-case basis as it could result in a broader review of transactions by the customs authorities.

20 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No. However, in practice, the two values should be consistent.

21 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Generally, no. However, the publication of IN2090/2022 together with new resolutions on calculating transfer prices arising from OECD guidelines has put this area under a greater spotlight.

22 Q The Value Added Tax Law does not address the treatment of additional VAT paid due to an increase in the customs value resulting from transfer pricing adjustments.

A No.

Canada

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A Possibly. A transfer price based on an Organization for Economic Co-operation and Development methodology may or may not be adequate depending on the circumstances. Transfer pricing studies, agreements, and APAs may contain information that is relevant and useful.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The circumstances of sale (COS) test is likely to be applied more commonly than the test values approach. The customs authority will consider the totality of evidence available under the COS test. This may include financial data, data from transfer pricing documents and/or APAs, intercompany agreements, product or transaction-specific profitability analyses, objective industry studies that evidence pricing practices of the industry, data on unrelated party sales, and any other evidence that supports the arm's-length nature of the prices under the customs rules. Importers should proactively conduct a separate customs analysis. When a transactional profit method is used to determine the transfer price, the customs authorities are likely to require supporting information on prices that is more directly related to the specific importations.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. If the customs authorities find that the customs value may be influenced, the importer has the onus to prove it was uninfluenced using one of several methods. This can include the methods under the circumstances of sales test or the test values test. Information in transfer pricing documentation may also be referenced.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. There is no formal process. An importer may separately seek a National Customs Ruling from the customs authority on the valuation methodology to be applied to imports.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. Customs Departmental Memorandum D13-4-5, entitled "Transaction Value Method for Related Persons," provides guidance with respect to the treatment of related party prices, adjustments, agreements, etc.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes, provided appropriate supporting documentation is available, the adjustment is related to non-dutiable goods, and does not result in a refund of duties for each affected transaction. There is no exception to report when the duty rate is 0. Where an adjustment would result in a refund of duties for all affected transactions, an importer may seek a refund but is not required to do so.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, provided appropriate supporting documentation is available. There are certain limitations in reporting decreases; however, these do not apply to adjustments that occur after importation but that result from an agreement that is in writing and in effect at the time the goods are imported.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Corrections are required within 90 days of having reason to believe the original declarations were incorrect. Refund claims for valuation are subject to a 4-year statutory time limit.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Interest is applied based on the duty and/or taxes owed. If increases in value for dutiable goods or decreases in value for non-dutiable goods are not reported within 90 days, penalties may be issued and are based on the number of affected transactions, or the number of issues being penalized. Penalties generally apply at graduating rates, increasing per repeat infraction. A voluntary disclosure, if accepted, should waive penalties and may reduce interest. Failure to file a refund request is not subject to penalty.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Currently, corrections and/or refund claims are submitted on a B2 adjustment form. The process is the same for increases and decreases to the transfer price though the supporting documentation requirements may differ. The process is the same for other value-related corrections. This process will change after the final release of the Canada Border Service Agency Assessment and Revenue Management (CARM) initiative in October 2024. Future adjustments will need to be filed through the CARM Client Portal.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Yes, blanket B2 adjustments may be approved by the customs authorities in advance of filing. The disclosure process is the same. The implementation of CARM in October 2024 will require future aggregate adjustments to be submitted to the customs authorities as "mass adjustments" in the Client Portal.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No. Adjustments must be reported within 90 days of finalizing the total adjustment amount for the fiscal period using a B2 adjustment form. The upcoming implementation of CARM in October 2024 will change this procedure.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Additional Goods and Services Tax (GST) must be paid to the customs authorities on amended entries, and can be claimed as an input tax credit on the GST return provided that the importer is eligible to claim such credits.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A It may be possible to recover any overpaid GST if the importer is either a non-registrant or does not recover full input tax credits. The form and process vary depending on the circumstances. GST is not refundable for registrants as the eligible portion of GST originally paid would have already been recovered.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: No. However, if a non-Canadian vendor is registered for GST/Harmonized Sales Tax (HST), it might be required to collect GST/HST in connection with a value increase and may be subject to interest and/or penalties for failing to do so.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, provided that the importer is eligible to claim such credits.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly, if the value reported significantly differs from the prior reporting period. No set threshold exists. It is recommended that the information and support for making a prospective adjustment be appropriately documented and maintained.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A In practice, no. However, information reported on export declarations must be true, accurate, and complete. Penalties may apply when this requirement is not met.

Chile

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A Yes, if no transfer price adjustments are made. No, if adjustments are involved. However, transfer pricing studies and APAs may contain information that is useful.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities will consider information contained in transfer pricing studies, including the covered transactions, functions, assets, and risks of the entities involved, the import declaration and transaction documents.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Yes. The circumstances of sale test is required by regulation and any of the 3 methods under the test may be applied. In practice, price determination must be based on objective and quantifiable data. The customs authorities will examine the way in which the buyer and the seller have organized their commercial relations and the way that the price in question has been set.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. However, where adjustments lead to a change in duties and taxes paid, the customs value, which is calculated on a "Cost, Insurance and Freight" basis, would be included in the basis of the calculation.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No. However, Exempt Resolution No. 3637 states the procedure for requesting an advance agreement on normal market prices, values, or profitability, and requires the request be supported by a transfer pricing report prepared by a third party. Exempt Resolution No. 2852, of the Compendium of Customs Regulations, covers the acceptability of comparison prices between related parties and APAs.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes, if there is no APA, importers must report retroactive adjustments and present supporting documentation to applicable regional customs offices. There is no exception where the duty rate is 0. If there is an APA, where both the tax and customs authorities participated, adjustments to the company's profit can be agreed upon without modifying the import declarations. Additionally, there is pending legislation that, if enacted, would set forth this same approach.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes, the Compendium of Customs Regulations states that the import declaration must be updated "when the duties, taxes, rates or other charges have been applied erroneously," which includes subsequent modifications of prices actually paid for goods. There is no exception when the duty rate is zero.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The request process is the same. However, duty refunds are difficult to obtain. If there is an APA, and both the tax and customs authorities participated in the APA process, adjustments to the company's profit can be agreed upon without modifying the import declarations. Additionally, there is legislation pending in Congress that, if enacted, would set forth this same approach.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: within 30 business days of the filing of the income tax declaration that is based on the adjustment. Duty refund: if a preferential trade agreement applies, the timing is based on the agreement, which may vary between 6 and 24 months; absent such agreement, 1 year. There are no specific time limitations for reporting a change without penalty.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Article 174 of the Customs Ordinance includes fines. If filing deadlines are not met, fines are as follows: For adjustments leading to a decrease in duties and taxes owed, a fine of up to double the resulting difference between the duties and taxes identified and those owed on the original declaration. For adjustments that lead to an increase in duties and taxes owed, a fine of up to 2% of the value of the merchandise. If the adjustment submitted includes errors, there is a risk that additional fines can be imposed if such errors are identified after submission.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Absent an APA, the importer must complete an electronic form with the adjusted values and send documents to support the change via email. The disclosure process is the same whether the change leads to an increase or decrease in customs value and regardless of the type of value correction. If there is an APA, and both the tax and customs authorities participated in the APA process, adjustments to the company's profit can be agreed upon without modifying the import declarations. Additionally, there is legislation pending in Congress that, if enacted, would set forth this same approach.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Absent an APA, transaction-by-transaction and the disclosure process is the same. If there is an APA, and both the tax and customs authorities participated in the APA process, adjustments to the company's profit can be agreed upon without modifying the import declarations. Additionally, there is legislation pending in Congress that, if enacted, would set forth this same approach.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The monthly VAT return should be amended to reflect the correct import VAT and filed with the tax authorities.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A The monthly VAT return should be amended to reflect the correct import VAT and filed with the tax authorities.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Yes. If the adjustments do not generate a tax payment, administrative fines apply. If the adjustments lead to taxes owing, an adjustment for inflation plus 1.5% penalty interest per month or fraction; plus a fine equivalent to 10% of the taxes owed. The fine will increase 2% for each month or fraction of delay, with a cap of 30% of the taxes owed. Additional penalties will apply if the tax authority identifies the difference before disclosure.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. Additional VAT must first be paid to the customs authorities and can later be claimed as a credit on the tax return filed with the tax authorities to obtain a refund. This results in a cash flow impact.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. Information and supporting documents for making a prospective transfer pricing adjustment must be appropriately recorded and maintained. Importers may proactively contact the customs authorities to discuss transfer pricing adjustments. For even greater certainty, the importer may request an APA and provide it to the customs authorities. An APA that involves imported goods is signed by both the Chilean tax and customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Generally, yes. When there is a mismatch, the tax authorities may undertake either an informal or formal audit to review the reason for the mismatch. Such audits can have broad consequences, including challenges to tax deductions taken.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A It has risen to medium priority.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

China

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A Evidence would include, but is not limited to, the sales price from the same seller to third parties in China, price composition, the margin earned by the seller and the buyer in relation to the supply of goods in question, transfer pricing documentation, and a benchmarking study. An explanation letter justifying the rationale of the related party prices is recommended.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A Yes. Generally, the customs authorities prefer to use the test values test and to compare to reference prices in their own data. Under the circumstances of sale test, the customs authorities prefer to use the deductive value method on the distribution company.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Possibly. Although difficult to achieve in practice, the customs and tax authorities may agree on the same methodology and price if there is a reasonable basis to do so. Specifically, in May 2022, the city of Shenzhen announced a pilot program that allows qualifying businesses to have their transfer pricing arrangements for the importation of goods from related parties agreed by both Shenzhen customs and the tax authorities.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. Reporting is voluntary, however, the importer has the responsibility to confirm whether the relationship affects the declared prices. The customs authorities may view changes due to transfer pricing adjustments to indicate the relationship of the parties affected the original price. There is a risk of fines and penalties if an audit is commenced.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. Reporting is voluntary, although recommended to avoid potential penalties that may result from an audit.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. In practice, however, duty refunds are difficult to obtain. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments: 3 years. Duty refunds: 1 year.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Value increase: Yes. Administrative penalties of 30% to 200% of the import duties and taxes owed, plus a late payment surcharge, may apply. Value decrease: No.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A If the importer elects to report a change, it can utilize the voluntary disclosure program to reduce, mitigate, or waive potential penalties where appropriate. GAC Bulletin [2023] No.127 regulates the scope of application with timing requirements and thresholds. The updated guidance became effective on 11 October 2023 and will expire on 10 October 2025. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A In general, an aggregate approach is more commonly proposed by importers in practice. However, a transaction-by-transaction approach is used more often by the customs authorities in audits. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A Yes. The customs authorities introduced an advance ruling program on 1 February 2018. The program covers import pricing elements such as the special relationship between the seller and the buyer. Importers may consider utilizing this program to address transfer pricing adjustment issues.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A No additional VAT filings are required. An adjustment to import value will automatically result in the assessment of additional VAT.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No additional VAT filings are required. However, VAT refunds are difficult to obtain.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Value increase: Yes. Administrative penalties of 30% to 200% of the import VAT owed, plus a late payment surcharge, may apply. Value decrease: No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Yes. No set threshold has been published. However, in practice, a 5% or more variance in price may trigger the scrutiny of the customs authorities in Shanghai. It is recommended that the information and support for making a prospective adjustment be appropriately documented and maintained, and that the importer be prepared to answer any questions regarding its related party pricing and prospective transfer pricing adjustments. The importer could seek an advance agreement with the customs authorities, but it may be difficult to obtain.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A Generally, no. However, the Processing Trade Relief provisions require consistency. Also, a significant variance may trigger scrutiny by the tax authorities.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Yes.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No. Reporting is voluntary although recommended to mitigate potential penalties that may result from an audit.

Colombia

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may be used to prove that the price has not been affected by the relationship of the parties.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A In order to determine if the link between related parties has affected the price, the customs authorities must review several aspects of the transaction, such as the way the buyer and the seller handle their commercial relationships and the way they have agreed the price. Based on the above, the transfer pricing studies might be one of the documents required by the customs authorities to carry out this review.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A The customs authorities use two primary methods: the circumstances of sales test or the test values test. In addition, they may take into account information contained in transfer pricing studies depending on the particular case.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. The tax and customs groups operate as two branches within one authority but use separate methodologies to evaluate pricing. There are no procedures to coordinate decision-making.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. Based on the World Trade Organization Valuation Agreement, the customs authorities have published a guide called "Linkage in the Field of Customs Valuation" that develops unified criteria to clearly identify whether the relationship of the parties has influenced the negotiated price and to correctly determine the customs values of goods sold between related parties.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes, importers must report the change by correcting the import declaration and paying any additional duties, penalties, and related interest. The customs value may not be increased without undertaking this process. If the increase does not trigger additional duty payments, no penalties will apply.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, and there is no risk of fines or penalties. If the importer voluntarily decreases the customs value, it must request a refund of any overpaid duties. Any customs value decrease must be substantiated.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, there is a procedure to ask for a duty refund following a customs value decrease. A refund may be possible as long as the customs value decrease is justifiable (other than just a change in prices). It will be necessary to carefully review the decrease in value so that it is not questioned.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payment and duty refunds: 3 years from the date of the accepted import declaration.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Whether the customs authorities investigate or the importer voluntarily adjusts the customs value, penalties equivalent to 50% of the difference between the declared value and the adjusted value, plus additional duties and interest, will apply. However, if a voluntary disclosure is made, applicable penalties will be reduced to 20% of the total penalty.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A No formal procedures exist. In the event of an increase, the importer may submit a corrected import declaration, and pay for any additional penalties and interest due. In the event of a decrease, even if the importer submitted a corrected import declaration, a refund would not be granted when the basis for the decrease is a retroactive transfer pricing adjustment.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments may be required by the customs authorities as the result of an audit. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A If there is an increase in the customs value, additional VAT may be applicable. Any applicable VAT must be declared in the periodic VAT return.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A If the customs authorities accept a request to correct an import declaration, the importer may request a refund of any overpaid VAT.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Yes. Value increase: A 10% penalty applies if insufficient taxes are paid due to an error or inaccuracy in the import declaration. Alternatively, a penalty of 50% of the difference will apply when declaring a taxable base that is lower than the customs value determined in accordance with the valuation rules. Value decrease: No additional penalties.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. The increase in VAT due may be deductible, as long as the conditions required for making such a deduction are met.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. It is not recommended to significantly adjust transfer pricing on a prospective basis. It is recommended that any such adjustments be made gradually with extended intervals between adjustments.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Yes. The potential risk is an investigation by one or both branches (tax and/or customs).

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No. However, the customs authorities do review customs values regardless of whether the parties are related.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes, if there is a price adjustment, Values in the export declaration must be restated (corrected) in order to be compliant with the exchange regime requirements.

Costa Rica

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. The customs authorities do not currently consider transfer pricing studies. While APAs can be considered as part of the evidentiary basis that is submitted to support the transaction value, they are not the only evidence that will be considered. The customs authorities usually request accounting data and transfer receipts, among other evidence, when they have questions regarding the acceptability of the declared value.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Importers are required to declare their relationship with the supplier as part of the Customs Value Declaration ("DVA"). The customs authorities can request any information related to the customs value, including bank statements, customs invoices, and proof of payment, as well as financial and accounting information for the companies involved. It is possible to inquire about and request advance criteria from the customs authorities regarding valuation in specific situations. It is highly recommended to conduct a test/analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A There is no specific or preferred method. The customs authorities typically request purchase and sale contracts (if they exist), accounting records, and proofs of payment. They also request other documents at their discretion.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. There are no procedures to coordinate decisions between the tax and customs authorities.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, if the adjustment is made solely to comply with transfer pricing rules. However, if the adjustment is required under the customs value regulations, then the importer must report. There is no exception to report if the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes. Fines and penalties may also apply.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, if the adjustment is made solely to comply with transfer pricing rules. However, if the adjustment is required under the customs value regulations, then the importer must report. There is no exception to report if the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. However, while legally possible, the process is difficult and may take years to complete. Importers may submit a formal letter to the customs authorities explaining the basis for the change and provide evidence to support the decrease in value. The process for reporting decreases due to transfer price adjustments remains unclear.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 4 years from the date of the customs declaration. This period is not specific to retroactive transfer pricing adjustments. There are no specific time limits to report a change without penalty.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Changes may require the payment of additional duties, taxes, fines, penalties, and interest. Value increase: a) if duty/tax owing is more than USD 100, but less than USD 1000, a USD 500 fine per importation will apply; b) if greater than USD 1000, a fine equivalent to twice the taxes not paid will apply. Filing a voluntary disclosure may reduce fines, however, interest will apply. Value decrease: Fines and penalties will not apply, but the decrease in value will need to be supported with evidence.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A A recent modification to the Customs Law allows importers to electronically self-correct their customs declarations. However, this modification has not yet been implemented in the computer system of the customs authorities. As of April 2024, implementation is expected later in 2024. Pending that change, an importer may submit a letter to the customs authorities requesting the adjustment and explaining the reasons why the change is required together with evidence supporting the change. The process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A There is no formal process that allows for either aggregate or transaction-by-transaction adjustments. Importers must submit a letter requesting the change with supporting evidence. The process is the same if the change is the result of a retroactive transfer pricing adjustment.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Additional Goods and Services Tax (GST) must be paid and can be claimed as an input tax credit on the GST return, so long as the importer is eligible for credits. The importer must also reconcile the GTS return and include the new GST credit in the monthly return.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Generally, GST is not refunded. While a process to claim a refund exists, it is difficult to obtain.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Yes. Fines and penalties may apply.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, but this should be examined on a case-by-case basis. The correction of the VAT declaration may be required and a favorable balance may be generated as a result.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Yes. If the values are not consistent, the customs authorities and tax authorities may investigate.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No. However, customs authorities may review customs values and can investigate if the relationship has influenced the customs value.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No, unless it is required by the authorities.

Croatia

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities will require all available documentation substantiating that the related party price is acceptable for customs purposes, in particular the documentation proving the transaction value corresponds with one of the test values determined pursuant to the customs rules or the documentation substantiating the arm's length transaction (information that the price is determined in accordance with the practice in a specific industry, the price paid covers all costs and profit, etc.).

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A The customs authorities typically test the circumstances surrounding the sale.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Yes. The customs authorities could accept the methodology determined for tax purposes provided it is substantiated in a way that also meets the customs requirements.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A Yes. The customs authorities have published internal guidance on specifics associated with related party transactions. This guidance is also available to the public.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 3 years from the date the customs declaration is accepted. Voluntary disclosures may be made 3 years from the date the customs declaration is accepted without penalty. While no fines would typically apply, interest on the late payment may apply.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Fines may range from EUR 350 to EUR 130,000 in cases where the value change from the retroactive transfer pricing adjustment would be considered a misdemeanor (a non-criminal offense typically punishable by a prescribed fine). The applicable interest rate would be the rate that applies at the time of reassessment.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A The importer should notify the customs authorities by filing a letter of explanation along with supporting documents. In some cases, the importer can agree with the customs authorities to declare a provisional value at the time of import and finalize the value following any transfer pricing adjustments before a deadline agreed upon with the customs authorities. The disclosure process is the same for both increases and decreases.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Typically, transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A No additional VAT filings are required. The importer is obligated to pay the VAT that is assessed by the customs authorities.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No additional VAT filings are required in relation to import VAT liability. An adjustment to import value will automatically result in a refund of the overpaid VAT. An input VAT deduction would be corrected through the VAT return.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes, if conditions are satisfied. Generally, a taxpayer may deduct import VAT provided it holds an import customs declaration in which it is named as importer or recipient of goods, and the declaration states the amount of import VAT that is payable (or provides data for calculation of that amount).

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Possibly. No set threshold exists. It is recommended that the adjustment is duly evidenced so that the importer is able to address and answer any questions regarding its related party pricing and prospective transfer pricing adjustments.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Yes.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

Czech Republic

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities generally require an invoice. If prices vary widely from similar imports, additional documentation (including the transfer pricing analysis) may be requested. No additional test/analysis is required. However, an analysis to substantiate the arm's length nature of the related party price under the customs rules is recommended.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A The customs authorities typically compare customs values to reference prices in their internal data. The circumstances of sale test and the test values test are rarely used.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Possibly, but this is untested.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Possibly. Based on recent practice changes, when there is a decrease in customs value, duty refunds may be available if approved by the customs authorities on a case-by-case basis and provided written documentation supporting the transfer pricing adjustment is in place prior to the date of importation. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 3 years from the date of release of the imported goods. This time limitation is extended to 10 years for criminal acts. Penalties are waived if a voluntary disclosure is made within 60 days of the date the goods are released. For voluntary disclosures made after 60 days, reduced penalties apply.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Fines of up to CZK 4 million, plus interest, may apply. If a voluntary disclosure is made, fines, penalties, and/or interest may be reduced or eliminated.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer should submit an application to the customs authorities for the correction of declared customs values. If the new customs value is higher, then the customs authorities will calculate the additional customs duties owed and issue an additional payment assessment. If the new customs value is lower, then the customs authorities will decide whether the customs duty will be refunded. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The ordinary VAT return for the period in which the change was made must be adjusted to reflect the new VAT tax base and VAT amount.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A The ordinary VAT return for the period in which the change was made must be adjusted to reflect the new VAT base and VAT amount.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes. If the adjustment is discovered upon audit, penalties of 20% of the VAT owed, plus interest, and a fine of up to CZK 500,000 may apply. If an adjusted VAT return is filed, no penalties or interest would apply. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A No.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly, based on recent practice changes. There is no formal process to proactively address this with the customs authorities. However, it is recommended to contact the customs authorities in advance.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Possibly, based on recent practice changes. The potential risk is the denial of the corporate tax deduction and the issuance of fines, penalties, and interest.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No. However, transfer pricing in general is subject to increased scrutiny by tax authorities.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Denmark

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may request transfer pricing studies, APAs, invoices, and price lists, though the evidence requested will vary on a case-by-case basis. It is recommended to conduct a test/analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. The approach varies on a case-by-case basis. Importers should conduct a test/analysis.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Recent guidance (notat) dated 22 November 2023 states that year-end transfer pricing adjustments will not trigger customs consequences, subject to certain conditions. In particular, the transfer pricing adjustments should relate to the imported goods and no specific arrangements should be in place between the importer and the customs authorities. This guidance relates to year-end retroactive transfer pricing adjustments only and not to other types of transfer pricing adjustments.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception when the duty rate is 0. However, recent guidance (notat) dated 22 November 2023 states that retroactive year-end transfer pricing adjustments will not trigger customs consequences, subject to certain conditions.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes. This is generally required when the price is not fixed at the time of importation. There is no exception when the duty rate is 0.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception when the duty rate is 0. However, recent guidance (notat) dated 22 November 2023 states that retroactive year-end transfer pricing adjustments will not trigger customs consequences, subject to certain conditions.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The request process is the same; however, the type of documentation needed to support a refund claim may differ based on the situation.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 3 years from the date of release of the imported goods. This time limitation is extended to 10 years in case of intentional or negligent conduct.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties of up to 50% of the duty owed may apply if the adjustment is discovered upon audit. If a voluntary disclosure is made, there may be reduced or no penalties. No interest would apply in either case.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer should file a general correction form, including supporting documents, and a letter of explanation. The disclosure process is the same. A new tool, "Told Wizard," is now available, which an importer can use to apply for adjustments and submit corrections via direct web access to the customs authorities.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No. However, in the event that the final invoice is not available, a simplified customs declaration authorization may facilitate repeated adjustments. The customs declaration should clearly indicate that the value is provisional and will be adjusted after customs clearance.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A For importers with a deferred payment arrangement, VAT will automatically be corrected if the importer files a correction. For other importers, import VAT need not be corrected in the VAT return if an importer has the right to a full deduction of import/input VAT.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A For importers with a deferred payment arrangement, VAT will automatically be corrected if the importer files a correction. For other importers, import VAT need not be corrected in the VAT return if an importer has the right to a full deduction of import/input VAT.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. The percentage threshold of change to customs value will vary depending on the goods involved. There is no process to proactively address this with the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Egypt

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. A transfer pricing study or an APA may contain useful information to assess the arm's length nature of the transaction. However, the customs authorities may still request additional information and supporting documents. The customs authorities typically rely on the customs regulations and their underlying requirements to assess the customs valuation method used.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A Generally, the customs authorities may request detailed transactional data, such as invoices, contracts, price lists, or any other relevant documentation that supports the pricing arrangements between related parties. They will also compare the related party price against prices for similar products in their customs database. Alternatively, if no price exists within the customs database, they will review values for similar goods imported in the past 60 days. It is recommended to conduct a test or analysis under the customs rules.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No. However, the customs authorities generally follow the guidelines outlined in the World Trade Organization Valuation Agreement.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. However, there is a risk of fines and penalties that may result from the declaration of an incorrect customs value that is discovered during a post-entry audit process. Such audits may be conducted for 5 years after import. It is, therefore, recommended to report adjustments immediately after the adjustments are booked for accounting purposes.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Importers are not required to report post-importation changes. However, if the adjustments are voluntarily reported or if the customs authorities require an increase in the customs value, additional customs duties and taxes will be assessed, as applicable.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No, and there is no risk of fines or penalties.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A No.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Value increase: It is recommended to report adjustments immediately after the adjustments are booked for accounting purposes. There is no time limitation for reporting a change without penalty. Value decrease: Recent practice indicates that no refunds will be issued.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A No. However, an additional tax similar to interest may result.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Value increase: Importers should submit an official request that explains the adjustment, the basis for the adjustment, and notes the company's readiness to tender any resulting taxes owed. The request process is the same. Value decrease: There is no requirement to report.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A No, disclosures must be filed on a transaction-by-transaction basis. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A Under the new VAT rules, generally a re-calculation will be made for VAT purposes based on the increase in value. In addition, the authorities will apply a 1.5% additional tax for each month or partial month of delay in VAT payments on any adjusted amount.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A Where customs values are decreased, the customs authorities will typically continue to reply on the original value declared.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Yes. A 1.5% additional tax penalty for VAT purposes will be applied for each month or part of a month prior to the correction of the customs value.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes, if the declared customs value is raised, resulting in additional duties and VAT, the additional VAT paid can be treated as input VAT. This allows the VAT taxpayer to deduct the additional VAT amount from the output VAT owed on the return, subject to applicable rules and regulations.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Yes. No set threshold exists. It is recommended that the importer compare its prices against the customs authorities' guidance price lists prior to importation.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A Generally, no. However, in practice, the two values should be consistent. The potential risk is the denial of the corporate tax deduction. In all cases, the tax authorities use the customs authorities' validated information via an online system.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

France

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may request a cost analysis of the transfer prices and the transfer pricing documentation. No advance test and/or analysis is required.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. The method chosen will depend on the circumstances of each case. However, if Article 127 of UCC Regulation 2015/2447 applies, then one of the test values under Article 134 of UCC Regulation 2015/2447 shall be used to establish that the price is not influenced.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Generally, no. The customs and tax authorities communicate with each other, but there are no procedures to coordinate decision-making between the two authorities.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No. In 2020, the customs authorities published new customs valuation guidance that replaced the previous guidance, "Réglement particulier 2014" addressing the treatment of transfer pricing.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A While the recent Hamamatsu case (ECJ C-529/16, 20 December 2017) indicates that there is no obligation to report, a post-importation change in value will result in late interest charges as well as criminal penalties in cases of fraud. A duty rate of 0 will not prevent criminal penalties. It is recommended that importers proactively work with the customs authorities to establish an advance agreement to account for future price modifications, to avoid fines and penalties.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A While the recent Hamamatsu case indicates that there is no obligation to report, a post-importation change in value made by the customs authorities will result in late interest charges as well as criminal penalties in cases of fraud. A duty rate of 0 will not prevent criminal penalties. It is recommended that importers proactively work with the customs authorities to establish an advance agreement, if modifications anticipated, to avoid fines and penalties.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, importers may obtain duty refunds if a prior agreement is in place with the customs authorities related to expected changes after importation.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 5 years from the date of the clearance if there is no advance agreement in place. Duty refunds: For the period agreed in any advance agreement with the customs authorities, where no advance agreement is in place, no refund is possible. A new law implemented in August 2018 provides for favorable measures in cases of voluntary disclosures. Importers may now negotiate a waiver or mitigation of penalties, and a 50% decrease in late interest payments applicable to import VAT and national taxes owed (but not on customs duties). If a disclosure is made during an audit, late interest may be decreased by 30%. There are no time limits for reporting a change without penalty if an advance agreement is not in place.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. For 2024, monthly interest of 0.2% is charged starting on the first day of the month after the date in which additional duties are payable. Criminal offenses may lead to the application of specific penalties including EUR 300 to EUR 3,700 per false declaration, seizure of the goods or fines up to twice the value of the imported goods. Penalties may be negotiated down (to the administrative cap of 20-25% where there were no bad intentions found based on practice). Voluntary disclosures will also help to reduce fines and penalties.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Under the UCC, an importer may enter into an advance agreement with the customs authorities to apply a provisional value procedure, a simplified declaration indicating that prices will change post-importation, or a rate adjustment procedure. The customs authorities prefer the latter, but will authorize the use of the provisional value procedure where the transfer pricing adjustment method is not suitable for its use. The applicable reporting requirements are specified by the individual agreement terms. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction. However, aggregate adjustments may be permitted under a simplified customs declaration authorization. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. The importer may request a simplified declaration authorization or enter into an adjustment agreement related to potential year-end, lump-sum adjustments.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Since 1 January 2022, import VAT must be reversed charged on the VAT return of the taxpayer. If the VAT should be reversed charged, the correction must be made in the periodic VAT return covering the month in which the adjustments were made. If the importer is using a rate adjustment procedure, the values on customs declarations are considered final and no adjustments are needed.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A If the import VAT is reversed charged, it should be corrected on the periodic VAT return.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Generally, no, if the import VAT owed is properly reverse-charged. A failure to reverse-charge the import VAT can result in a penalty of 5% of the VAT owed.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, the payable VAT may be treated as input VAT and deducted against the value of output VAT due on the VAT return.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. Any difference between the customs value and transfer pricing adjustment may trigger scrutiny. The customs authorities will examine the profit and loss statement as part of its review. To manage prospective adjustments, importers may prospectively negotiate the rate adjustment procedure with the customs authorities or use the provisional value procedures.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A In practice, the two values should be consistent. Inconsistencies found during a customs audit may lead to reassessments if the difference cannot be justified.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Increasingly, yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No, but it is recommended. Where an advance agreement is in place with the customs authorities, the authorization will cover any changes in export value.

Germany

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A There is no exhaustive list. Generally, the customs authorities will accept a variety of evidence, including customs declarations for similar goods, audit reports, or transfer pricing documentation. Importers should conduct a test or analysis under the customs rules.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. It will vary on a case-by-case basis. Generally, the importer may choose the specific method used to support its pricing, and present information such as transfer pricing studies, or pricing with unrelated parties and similar data that may be persuasive.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. An importer can approach the customs authorities in advance to accept the methodology determined for tax purposes, provided that, among other things, it is supported by a transfer pricing study. This will be determined on a case-by-case basis.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. Internal guideline E-VSF Z 51 01, paras. 30 to 37, address these issues. However, following these guidelines does not guarantee that the authorities will accept the related party price.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A As of March 2024, yes. However, the question of whether retroactive transfer pricing adjustments should require a change to the declared customs value is being contested and is pending review by the German Federal Finance Court.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, if requirements are met. In the case of retroactive transfer price adjustments, refunds are only possible if the reason for and the amount of the adjustments were contractually agreed upon prior to import. The credit note for the adjustment must be allocated to individual products or product groups with the same duty rate. The process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 3 years from the date the customs declaration is accepted. This time limitation can be extended to 10 years in cases of fraud. Changes to the customs value must be reported without undue delay, otherwise penalties may apply. The customs authorities define undue delay typically as 2 weeks as a rule of thumb and approximately 1 month in complex cases.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties and, in cases of tax fraud, interest may apply. In cases of tax evasion, the penalty amount is up to EUR 50,000. In cases of fraud, imprisonment of up to 10 years may apply. If a voluntary disclosure is made, fines up to 20% of the duty owed may apply in cases of tax fraud, and no fines in cases of tax evasion. However, the customs authorities may still impose a penalty in the amount equal to its determination of the "economic benefit" received by the importer due to the under-declaration of value.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer must amend each customs declaration. Before doing so, the importer should contact the customs authorities to seek guidance on how to proceed. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments or aggregated adjustments for product categories that are subject to the same duty rate are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional VAT filings are required. If the importer is not fully entitled to recover import VAT, an adjustment to the import value will automatically result in the assessment of additional VAT. If the importer is fully entitled to recover import VAT, no additional VAT will be assessed. In the case of fraud, additional VAT will always be assessed.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional VAT filings are required. Generally, import VAT is not reassessed if the importer is entitled to a full input VAT deduction. However, if import VAT is reassessed for any reason, the difference between the import VAT claimed for the input VAT deduction (from the tax authorities) and the import VAT reassessed by the customs authorities will need to be repaid to the tax authorities.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: Yes. Penalties may apply. In cases of fraud, penalties and interest may apply. If a voluntary disclosure is made, penalties can be reduced.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. The additional import VAT must be paid to the customs authorities, but, if the importer is entitled to an input VAT deduction in accordance with the VAT rules, the additional VAT can be deducted.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly, during an audit. No set threshold exists. However, it is recommended that the information and support for making a prospective adjustment be appropriately documented and maintained, and that the importer be prepared to answer any questions regarding its related party pricing and prospective transfer pricing adjustments.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. However, in practice, the customs authorities do not enforce this requirement.

Greece

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. In practice, few companies in Greece have applied for APAs.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may request the underlying transaction documents, including purchase orders, invoices, and/or any agreements between the involved parties. The customs authorities may also request proof of payment documentation (i.e., a bank transfer statement that matches the sales value) and/or export value information associated with the imported goods and prior imports of the same goods from the same supplying country. A test/analysis is not required.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No. No formal procedure exists.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. There is no formal procedure in place that specifically focuses on transfer pricing adjustments. However, companies may file an additional revised customs declaration where a customs value requires correction. There is a risk of fines and penalties.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. However, companies may file an additional revised customs declaration where a customs value requires correction. There is a risk of fines and penalties.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. While an importer may apply for a refund of the overpaid taxes and duties, and provide the basis for the request, the procedure is lengthy, the outcome of the audit is uncertain, and penalties will apply if calculation errors occurred.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments: 3 years from the date the duty became owed. This can increase to 7 years if smuggling is involved. In practice, customs records supporting import declarations should be maintained for 10 years after the date of import. Duty refunds: each case is examined on an ad hoc basis.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A For any unintentional undervaluation of customs value on dutiable goods, a penalty of 15% may apply to the difference in duties, taxes, and surcharges owed. For any unintentional over valuation of customs value on dutiable goods, a 5% penalty may apply to the difference in duties, taxes, and surcharges overpaid. For any unintentional under- or over-valuation that does not have an impact on duties or other charges owed, a penalty of EUR 100 per customs record may apply. For any intentional misdeclaration of customs value (e.g., smuggling), a penalty of 3 to 5 times the total customs debt and/or criminal sanctions may apply. The lack of timely payment of a customs debt will also result in penalties based on the type of violation, plus interest equal to the European Central Bank main refinancing operations (MRO) interest rate, plus 8.51% annually.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A There is no formal procedure in place that specifically focuses on transfer pricing adjustments. For either an increase or decrease, a written statement identifying the grounds for submitting an Amending Customs Declaration to change the customs value should be filed together with all supporting documents, including any debit or credit invoices issued, the relevant agreements, and/or transfer pricing studies. The customs authorities will issue the necessary official customs documents, which will be linked to the initial import declaration file bearing a unique number.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A No specific procedure exists. Each case must be dealt with on an ad hoc basis. There is no difference in approach.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A No official process exists. Additional filings may be required on a case-by-case basis with the customs authorities.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No official process exists. Additional filings may be required on a case-by-case basis with the customs authorities.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes, provided the importer holds the right to deduct. An entity must be engaged in (1) a business subject to VAT, or (2) a VAT exempt activity with the right to deduct input VAT. Relevant supporting documentation should be in place, such as additional customs declarations, additional invoices, and reporting in the relevant VAT return, etc. Also, the tax authorities have issued a Ministerial Document (D14A 1029571 EX 2013) that states that the VAT paid to the customs authorities, upon an audit or assessment, constitutes input VAT for the taxpayer for which there is a right to refund. The deduction is allowed at the time when the assessed VAT is paid to the customs authorities or upon the finalization of the tax assessment.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A No. However, this should be reviewed on a case-by-case basis. The customs authorities may maintain internal guidance which is not publicly available.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No. However, repeated and significant differences may trigger attention by the tax authorities.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No official process exists. Additional filings may be required on a case-by-case basis.

Guatemala

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may request transaction documents. No test/analysis is required.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A The customs authorities prefer to compare the declared value to reference prices in their own database.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No. The laws and methodologies used by the tax authorities are different from those used by the customs authorities.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. Once the importer knows that the declared value is incorrect, it must immediately request authorization to rectify the original declaration. There is no exception if the duty rate is zero.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes. Only interest, without fines, will apply if duties are paid before required by the customs authorities. A fine of 100% will apply if payment is requested by the authorities. This can be reduced based on the stage of the administrative process once a case is started.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No, and there is no risk of fines or penalties.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. Refund requests are subject to review and authorization by the customs authorities. The process is the same. Importers must first request authorization and, if approved, a refund may be requested.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A An importer is required to immediately request authorization to rectify if it becomes aware that a declaration is incorrect. However, corrections can only be made within 4 years of the original declaration.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. If duty is owing and the tax authority issues a fine, the underpaid amount, interest, and a 100% fine will be due. If no duty is owing, an administrative fine of USD 300 will apply. Fines may be reduced depending on the stage of the case in the administrative process. Fines may be avoided if the importer files a voluntary disclosure, but interest will apply.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A The process is the same. An importer must request authorization to correct and tender amounts due when filing the correction.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Corrections must be made on a transaction-by-transaction basis. The process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A The monthly VAT declaration must be corrected. A credit can be taken if filed within 2 months of the customs declaration and before the tax authority issues a request for correction.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A The monthly VAT declaration must be corrected.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Yes. Interest and a 50% fine will apply.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes. However, only if the taxpayer voluntarily files the change without request by the tax authority and if it is completed within 2 months of the filing of the original VAT declaration.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Yes, if the value is decreased. No set threshold exists. There is no process to proactively address this with the customs authorities.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A Yes. The potential risk is the denial of the corporate tax deduction.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

Hong Kong

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the declared value.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A Hong Kong is generally a duty-free port. There are four types of dutiable commodities: Liquors, tobacco, hydrocarbon oil, and methyl alcohol. The customs authorities will generally accept the invoice price as the declared value; however, they may use benchmark prices of other importers to determine whether the price declared is arm's length. If the declared customs value falls outside of the acceptable range, the customs authorities may seek further explanation.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No. As Hong Kong is generally a duty-free port, there is no preferred method.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Yes, provided that both the customs and tax authorities consider the price to be arm's length.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. There is no mechanism in place to report post-importation changes. However, any adjustment that increases the value may trigger an underpayment in duties paid. To avoid penalties during an audit, importers should consider voluntarily informing the customs authorities.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Potentially yes for dutiable commodities, which are assessed based on the ad valorem value.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No, there is no mechanism in place to report post-importation changes.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Potentially, yes. This is subject to a case-by-case review by the customs authorities.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A N/A

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A N/A

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A N/A

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A In practice, the customs authorities will usually examine on a transaction-by-transaction basis.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A N/A

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A N/A

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A N/A

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A N/A

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A No. Importers may apply for an advance custom ruling. However, the process is new and there is no common practice trend at this time.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No. However, the customs authorities may apply benchmark pricing to determine customs value for dutiable commodities.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

Hungary

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may request invoices, transfer pricing studies, APAs, or price lists of similar products. It is recommended to proactively conduct a test/analysis that could be provided to the customs authorities, if needed.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No. However, in practice, the customs authorities may use EUROSTAT data to test whether a related party customs value is arm's length by comparing related party prices to prices of similar goods in their databases.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Yes.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Generally, yes. However, importers may apply for a special license based on which the change should not be reported. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report if the duty rate is 0. However, in some cases, importers who have obtained preliminary approval from the customs authorities for the provisional treatment of related party customs values would not be required to report the change.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. However, in practice, the customs authorities will not typically refund duty overpayments due to post-importation decreases in the reported customs value. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 3 years after the closing of the verification activities by the customs authorities.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A If the customs authorities determine duties are owed, the penalty rate under the applicable Hungarian legislation is generally 50% of the duty owed (or 200% for excise products), with a minimum of HUF 40,000. If the customs authorities determine no duties are owed, the following customs fines may be assessed: For infringements related to the filing of customs declarations, notification procedures, or the preservation of supporting documents, a maximum fine of HUF 500,000; or for infringements related to the application of the customs legislation, a maximum fine of HUF 1 million.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A The importer must amend the affected import declarations. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Typically, transaction-by-transaction adjustments are required. Some regional customs authorities may allow aggregate adjustments. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A The import VAT filing should be corrected to align with the modified customs values.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A The import VAT filing should be corrected to align with the modified customs values.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Value increase and decrease: No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A No. It is recommended that the importer proactively contact the customs authorities to discuss prospective transfer pricing adjustments to avoid fines or penalties.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A Yes, based on recent practice.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Yes. Recent practice indicates an increasing focus in this area.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

India

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities rely on transaction values of identical or similar goods or test values of similar goods using the computed value or deductive value method. In addition, the customs authorities may request transfer pricing documents, APAs, comparable invoices, price lists, etc. It is recommended to conduct a test/analysis. Generally, the Special Valuation Branch (SVB) reviews related party imports.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. Importers should submit evidence supporting the arm's length nature of the transaction. The importer may use any of the available customs valuation methods to justify the declared customs value, including test values that reference the transaction value of identical or similar goods or values determined using deductive or computed value methods. If the customs authorities disagree, they will conduct their own testing to check the arm's length nature of the transaction.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Possibly. If the prices are considered reasonable when compared against the customs or tax regulations, the customs and tax authorities may independently agree on the methodologies to arrive at an acceptable price. The customs authorities accept the import price on a transaction basis and corporate tax, the income tax levied on an annual income for the financial year, is determined at entity level. There is no formal legal process.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. The customs authorities could examine the transaction, and when required, the jurisdictional Customs Commissioner could further refer the matter to the jurisdictional SVB. There are no exceptions when the duty rate is 0. Failure to report import value increases may result in penalties, if discovered upon audit.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes, unless the goods are duty free.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. The customs authorities could examine the transactions. The matter may be referred to the jurisdictional SVB. There is no exception to report when the duty rate is 0. An importer must submit the underlying documentation to justify any decrease. It is likely that the customs authorities may dispute any refund claim.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Possibly, but unlikely. Requesting duty refunds is a multi-step process that involves a final assessment or reassessment of the provisional determination, and filing and processing the refund claim, which must clear the burden of unjust enrichment.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: Within 2 years from the date of customs clearance or within 5 years in cases where collusion, suppression, or misstatement is involved. Duty refund request: Within 1 year from the duty payment. Voluntary payments of additional duty with interest, in cases not involving collusion, suppression, and misstatements made within 2 years of entry will not entail penalties.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. If the customs value increases, the importer is liable for any additional duty owed plus interest. However, penalties would not be assessed on a decrease in customs values. Absent misdeclarations or fraud, penalties may be reduced or avoided by filing a voluntary disclosure.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer should document the facts relating to the change in the reported customs value in the prescribed format and report them to the customs authorities at the port of import as well as the SVB. Any annual price adjustment must be apportioned to the individual import transactions to determine the change in duty liability and the interest payable at each port of import. Any change in duty payment can be made in writing against a challan (i.e., a tax document that sets forth the duty owed) followed by a full disclosure of details to the customs authorities. Alternatively, a declaration of change in duty payment and interest can be submitted to the respective ports for verification, and duty payments would be made following their confirmation.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction disclosures are required since duty rates are linked to the date when the entry documents are filed. Any interest owing is computed from the first day of the month following the month of customs clearance up to the date any duty owed is paid. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No. The Customs law allows for the self-assessment of any underpaid import duty, a subsequent reporting and payment to the authorities. Multiple corrections may be permitted if the pricing methodology was reported and accepted by the customs authorities in advance. Multiple customs value adjustments caused by transfer pricing adjustments should be reported to the SVB as well as the port of import. In the absence of prior reporting, multiple corrections are likely to be investigated and examined for intent. Multiple corrections can also lead to penalty assessments.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Any increase in customs value that leads to changes in the integrated tax computation must be reported in Goods and Services Tax (GST) returns.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Any decrease in customs value that leads to changes in the integrated tax computation must be reported in GST returns.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Possibly. Penalties, reversal of credit, and/or interest-related consequences would depend on the conditions surrounding the changes in the GST returns or any late credit claims.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Generally, yes. However, the GST law prescribes a time limit on the use of any credit for GST paid on imported goods, i.e., 30 November of the following financial year. If a credit arising from GST paid due to a customs value increase is not claimed within the prescribed time limit, the GST authorities will likely reject the claim.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. However, there is no set percentage threshold. If the customs authorities consider such adjustments to be a change in the circumstances of the sale, or if any other payments, such as royalties, license fees, or post-sale proceeds, become payable to the related supplier, the importer is required to report such payments to the port of import. In all such cases, the customs authorities would examine the transactions, and where required, the jurisdictional Customs Commissioner could further refer the matter to the jurisdictional SVB for investigation.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the values should be consistent. The potential risk is a demand for customs duties, plus interest and penalties, and/or further transfer pricing adjustments if the price differences are not satisfactorily explained.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Indonesia

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. Customs regulations are currently silent on related party valuation. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Customs regulations are silent on related party valuation. During an audit, the customs authorities will require complete transaction documentation (invoice, packing list, bill of lading/air waybill, sales contract, purchase order, pro forma invoice, etc.) to review customs values. In practice, the customs authorities will compare prices against those in internal databases and accept variances within 5%.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. The approach varies on a case-by-case basis. However, the customs authorities typically accept declared values within a 5% threshold of benchmarks in an internal database maintained by the customs authorities.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No. The customs regulations are silent on the use of transfer pricing as a basis for customs value.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Generally, no. However, importers may use the voluntary declaration process at the time of import to declare an estimated price or the cost and value to be added on the Import Customs Declaration ("PIB"). This indicates that the final value cannot be determined. The importer must then report the correct customs values and perform a Voluntary Payment ("VP") after the settlement date, which is typically within 1 year. Penalties may range from 100% to 1000% of the underpayment of import duty. There is no exception to report when the duty rate is 0. The customs authorities will implement a penalty of IDR 5 million for each customs document that has a discrepancy in value or quantity of goods.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. There is no risk of fines or penalties.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. Refunds are available using the voluntary disclosure process. However, it is generally not recommended because requests for import duty refunds may trigger a customs audit, which can lead to the detection of other issues.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Importers may use a voluntary disclosure mechanism to report changes in customs values. The time limitation is determined by the settlement date set at the time of import. The maximum time limitation on the settlement date is 1 year from the import declaration date.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. However, the penalty is imposed as a result of a customs audit. A maximum penalty of 1,000% of the duty underpayment may apply depending on the amount of the underpayment and the tariff provisions applied to the imported goods.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A A reporting requirement will only apply if importers use the voluntary disclosure mechanism during the import process. Value increase: A settlement must be filed within 7 business days from the settlement date. Value decrease: "None" should be reported within 7 business days of the settlement date. A refund can be requested under this process.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Customs disclosures are only available to importers who use the voluntary disclosure mechanism during the import process. The VP settlement must be performed on a transaction-by-transaction basis.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A An adjustment to customs value will automatically result in the assessment of additional VAT when the increase is reported in the VP settlement.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Decreases in customs value should only be reported as part of the voluntary disclosure process. This will result in an automatic adjustment to VAT.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. If the transfer pricing adjustment results in the increase of customs value, the customs authorities may consider the filed import declaration as under-reported customs value. There is no threshold for scrutiny; the customs authorities have their own criteria. There are no formal processes, requirements, or recommended approaches to managing prospective transfer pricing adjustments prior to importing at new prices. It is recommended that the information and support for making a prospective transfer pricing adjustment be properly documented and maintained.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent. An inconsistency may draw scrutiny from the customs authorities, and a downward adjustment to inventory value may draw scrutiny from the tax authorities.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes. The customs authorities maintain a database of import prices and will generally look for variances above a 5% threshold.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

Ireland

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. The EU customs valuation rules must always be followed. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Relevant evidence may include transfer pricing studies and documentation, contracts, royalty agreements, and related financial documents. It is recommended that the importer conduct a test/analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. Evaluation will be undertaken on a case-by-case basis.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. However, while it is possible to obtain agreement on methodologies with the tax authorities, the customs valuation rules will always take precedence.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No. However, the Revenue Commissioners: Guidance Manual Transfer Pricing Part 35A-01-01 has been published which includes some guidance related to transfer pricing legislation.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 3 years from the date of importation. The time limitation for additional duty payments and penalties may be increased in cases where the authorities have deemed that fraud has taken place. No, there is no specific time limit for reporting a change without penalty. The level of penalty and whether this is applied will depend on the reason for the change.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties may be applied if a customs declaration is deemed to be incorrect. Whether a penalty is imposed, and the level of the penalty, will depend on the reason for the adjustment.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer must request to amend the original import declaration and include a detailed explanation for the change together with supporting documents. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The VAT return must be amended to report the increase in customs value to meet relevant reporting requirements. Failure to do so could result in interest, penalties, and reputational risks.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A The VAT return must be amended to report the decrease in customs value to meet relevant reporting requirements. This may lead to a refund of the over-reported VAT to the taxpayer.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase or decrease: Yes. Penalties and interest may apply.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. This is subject to standard VAT deductibility rules and whether the importer is entitled to VAT recovery. If entitled to full VAT recovery, the importer may be able to account for the additional import VAT through a self-cancelling entry in the return, which will remove any cash-flow cost.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. Repeated adjustments in value could trigger an audit. There is no set percentage threshold. Any changes to the valuation method should be agreed in advance with the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, one could expect that large disparities between the two values would result in some inquiries by an auditing tax official.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes, customs valuation is a high-focus enforcement area.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. The authorities must be notified of export value changes for statistical purposes only.

Israel

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A Possibly. However, in some cases, further information may be required.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may request sales agreements, internal records (e.g., price lists, catalogues, correspondence), a statement regarding the relationship of the parties, information on sales to unrelated parties, or any documentation that substantiates the arm's length nature of the sale. In general, the customs authorities may request any document that will assist in evaluating the related party price.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A Yes. The customs authorities compare the related party customs value to the value of similar goods imported by unrelated parties.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Yes. The customs authorities may apply transfer pricing methodologies with respect to the valuation of imported goods.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A Yes. The customs authorities have published "Customs Procedure Chapter 2 – Evaluation," which addresses related party pricing. However, this publication does not address the treatment of prospective/retroactive transfer pricing adjustments.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0. There is a risk of civil and criminal penalties.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Possibly. In practice, customs authorities tend to aggressively review customs values.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes, if the goods were not onward sold and the excess tax paid on the goods was not onward charged to the end customer. However, in practice, duty refunds are difficult to obtain. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 5 years from the date of the taxable event. There are no specific time limitations for reporting a change without penalty, but the longer the period that the adjustment is pending, the greater the risk of penalties. This would also influence the approach to making a payment or requesting a refund.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Fines, interest, and an inflation adjustment may apply.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A A voluntary disclosure application may be filed to amend previously reported customs values. The process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A A voluntary disclosure application must be submitted to the VAT authorities.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No additional VAT filings are required.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Yes. Interest will apply to the VAT-related adjustment covered by the voluntary disclosure procedure.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Yes. No set threshold exists.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No. However, in practice, the two values should be consistent. There is a potential risk that the tax and customs authorities may exchange information and reject/amend either the taxpayer's taxable basis or customs values.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Yes.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A Yes.

Italy

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A A transfer pricing study or international ruling (which is similar to an APA and can be unilateral, bilateral, or multilateral) may be used to support the transaction value method if they clearly refer to the imported goods. It is recommended that the importer include a customs appendix to demonstrate compliance.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A In practice, the customs authorities may require sales agreements, transfer pricing documentation, company structures and details on the relationship of the parties. It is recommended that the importer conduct a "value test". Based on a circular letter issued in April 2017, if the importer requests an authorization for the simplification procedure, it should submit a transfer pricing study, international rulings, intercompany agreements and, any other documents.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. Generally, the circumstances of sale test is preferred.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Generally, no. While no formal procedures govern how the tax and customs authorities would arrive at the same price, it may be possible to obtain approval. In Circular Letter 16/D (November 2015), the customs authorities indicated that they may accept transfer pricing documentation to support related party customs values after examining the circumstances of the sale.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. Circular letter 16/D and Circular Letter 5 (April 2017) address the treatment of related party prices and post-importation transfer pricing adjustments.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. Despite the Hamamatsu case ruling (ECJ C-529/16, 20 December 2017), a post-importation change in value must be reported. Penalties may apply unless a voluntary disclosure is made before a customs audit commences or an authorization for either a simplified declaration or a simplification procedure is granted. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. However, the customs authorities may alter their practice based on the Hamamatsu case. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A No, unless the importer utilized a simplified declaration, and the transfer pricing adjustment can be supported under a transfer pricing agreement between the related parties before the importation date.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: Generally, 3 years from the date of the taxable event or 7 years if there is criminal activity. Duty refunds: An importer's simplified declaration authorization will define timing. If it does not, no refund is available. Changes may be reported without penalty within 3 years of the taxable event. Voluntary disclosures are precluded if the customs authorities have started an audit. While refunds should be available through the voluntary disclosure process, use of the simplified declaration authorization is typically required.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties from EUR 103 up to 10 times the duty owed, plus interest, may apply if the variance in duty owed is greater than 5%. This may be mitigated after a customs audit. No penalty will be assessed if the importer has implemented the simplified declaration or the simplification procedure, or has filed a voluntary disclosure that has been accepted by the customs authorities. Criminal penalties, including imprisonment, may also apply if there are repeated offenses or aggravating circumstances. As of February 2024, penalty rates are under review following a Supreme Court judgement that they are not proportional.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A In accordance with the Union Customs Code (UCC) that took effect on 1 May 2016, to adjust customs values post-importation, the importer must request an authorization for the simplified declaration or for the simplification procedure prior to importing the goods. In the event of retroactive transfer pricing adjustments, this authorization will specify the procedure for making adjustments to customs values. However, if neither of the above-mentioned authorizations has been granted, a voluntary disclosure remains an option, if accepted by the customs authorities, if a transfer pricing agreement exists. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction adjustments are required. However, aggregate adjustments may be authorized if a simplified declaration authorization is in place, or another specific authorization is obtained in advance, and a transfer pricing agreement exists. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. A simplified declaration authorization may facilitate repeated value corrections by allowing the importer to submit a customs declaration without the final customs value. The provisional customs clearance agreement allows the final customs value to be declared up to 2 years after entry. Additionally, the importer is also eligible for a simplification procedure, such as prospective adjustment agreements with the customs authorities.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Generally, additional VAT filings are not required, but may be recommended. An adjustment to import value will usually automatically result in the assessment of additional VAT. The importer may also be requested to adjust VAT and the related "plafond."

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Generally, additional VAT filings are not required, but may be recommended. A refund cannot be requested if the VAT paid upon importation has been fully deducted.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes. VAT fines are the same as for customs duties and are assessed collectively with customs fines. However, no penalty will be assessed if the importer has implemented the simplified declaration or the simplification procedure or has filed a voluntary disclosure before a customs audit commences (if accepted by the customs authorities). Value decrease: In practice, no substantial penalties would apply; however, penalties are theoretically possible.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, if the company has the right to deduct VAT.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. No set threshold exists. Customs values are scrutinized on a transaction-by- transaction basis. However, the risk of a customs audit may increase if the price of the same product changes within the same year.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes, and the scrutiny is expected to increase.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. However, a case-by-case analysis should be performed and VAT implications should be considered.

Japan

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may request, in addition to a transfer pricing study or APA, product-specific cost data to support that the related party price is not below cost and that the bank remittance records for the product purchased is the amount actually paid. A "circumstances of sale" test or "test values" test may be helpful but is not required.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. The customs authorities do not publicly state a preferred method. In practice, the customs authorities are typically seen to utilize reference prices from their own database.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. Reporting is voluntary, although recommended to avoid potential penalties.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, and there is no risk of fines or penalties.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. However, in practice, duty refunds are difficult to obtain. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 5 years from the date of import permission for goods affected by a retroactive transfer pricing adjustment. If additional duty payments are owed, importers must report the change before they are notified of any post-importation audit by the customs authorities to avoid penalties. If duty refunds are owed, there will be no penalties.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Value increase: Penalties of 5% to 15% of the duty owed, plus interest (currently 2.4% per annum of the duty owed from the date of the original import for up to 1 year), may apply. If a voluntary disclosure is made, interest may apply, but no penalties. Value decrease: If the customs authorities accept a refund application, the importer will receive the overpaid duties, plus interest at the annual rate if the refund is delayed by the authorities.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A In the event of either an increase or decrease, the importer should contact the jurisdictional customs authorities and negotiate how to amend past import declarations. The disclosure process is the same. However, changes resulting from retroactive transfer pricing adjustments may require additional time for review by the customs authorities.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Aggregate adjustments are available for upward adjustments, if previously negotiated with the customs authorities. Duty refunds may require a transaction-by-transaction adjustment. The disclosure process is the same. However, changes resulting from retroactive transfer pricing adjustments may require additional time for review by the customs authorities.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. The "advanced declaration of customs valuation" program allows importers to obtain approval to calculate the expected customs value based on transfer pricing adjustments. However, in practice, the customs authorities have granted few approvals.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No actions. An adjustment to import value will automatically result in the assessment of additional Japanese Consumption Tax (JCT) by the customs authorities. However, a claim for a JCT refund may be filed with the tax authorities.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No actions. An adjustment to import value will automatically result in a JCT refund from the customs authorities. However, amended JCT filings with the tax authorities are required to decrease the input JCT credit.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Penalties of 5% to 15% of the JCT owed, as well as the annual rate of interest (currently 2.4%) may apply. If a voluntary disclosure is made, interest would apply, but no penalties. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A If the following conditions are met, the paid import JCT is deductible: (1) The importer is a JCT taxpayer and eligible to act as importer of record under the Customs Code, and (2) The JCT taxpayer submits a request for JCT reassessment for the tax period in which the goods were originally removed from the bonded area or the special declaration form was submitted. The request for JCT reassessment can be made within 5 years from the statutory filing due date. However, in such cases, it can also be made within 2 months from the day following the date of submission of the amended customs declaration(s). Records to support the deduction must be kept.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. If the adjustment is significant, it is recommended that the importer submit product-specific cost data to support the related party price prior to importing at new prices.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

Kazakhstan

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Generally, the customs authorities may request transaction documentation (e.g., foreign export declarations, shipping documents, purchase orders, supply contracts, price lists, commercial invoices, bank payment documents, catalogues, etc.). A customs analysis of the transfer pricing is not necessary to justify the arm's length nature of prices.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A The customs authorities may use various methods including the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own databases, as well as other methods. For example, importers may submit documents to demonstrate that the seller sells similar goods at comparable prices to third parties in Kazakhstan.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Generally, yes. There is no exception to report when the duty rate is 0. The customs legislation does not specifically address changes to customs value due to transfer pricing adjustments. However, a retroactive increase in the price of goods will require an increase in the customs value, payment of additional duties owed, penalties, and fines, as applicable.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Generally, no. There is no risk of fines or penalties. Importers may consider voluntarily reporting downward adjustments to potentially obtain a duty refund, but refunds are difficult to obtain. The customs legislation does not specifically address making changes to customs value due to transfer pricing adjustments.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. However, in practice, duty refunds are difficult to obtain. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: Generally, 3–5 years from the date of original payment. Duty refunds: 3–5 years from the date of original payment, depending on the applicable statute of limitation. In general, the final limitation period is 3 years but 5 years will apply for certain categories of goods.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Fines of KZT 517,500 could apply for inaccurate declarations. For repeat violations in the same year, this can increase to a fine of KZT 1,035,000 per change. The importer can avoid fines by filing a voluntarily disclosure and correcting the violation within the applicable statute of limitations period, i.e., 3-5 years after the release of the goods and prior to the start of a customs audit.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, the importer must file a form called "The form of adjustment of the customs declaration." This form must include details of the value adjustment together with supporting documentation. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Generally, additional import VAT, as well as late payment interest, must be paid to the customs authorities. This additional VAT payment may be recovered if the conditions for input VAT recovery are met. The importer is responsible for amending its customs declaration and submitting the Form of Adjustment.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Generally, no additional VAT filings are required. However, if a VAT refund is requested and granted, then the original VAT filing must be amended.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. No set threshold exists.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, significant deviations between tax and customs data could attract more scrutiny during tax or customs audits.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes, but only for goods that are subject to export duties. The declarant (i.e., the party that conducts the foreign economic transaction) is responsible for paying the duties upon the export of the goods.

Kenya

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method. In practice, APAs are uncommon.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Required evidence may include a supplier discount policy, a supplier price list, information on costs incurred by the foreign related seller, an explanation of the circumstances of the sale, or test values on identical goods cleared at or about the same time. It is recommended to conduct a test and/or analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Yes. The customs authorities compare related party customs values to previously declared values on imports of identical goods by third parties.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A This is difficult in practice. However, importers may obtain advance valuation rulings which are binding on the importer and the customs authorities for 1 year.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. However, there is no requirement to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, and there is no risk of fines or penalties.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Generally, no. Refunds may be possible in the unlikely event that a decrease in value due to a retroactive transfer pricing adjustment is accepted by the customs authorities. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 5 years following a demand by the customs authorities. If additional duties are owed as a result of an audit, additional duties are payable within 30 days of notification of a demand. In the event of voluntary disclosure, a settlement is agreed upon between the importer and the customs authorities. Duty refunds: 12 months from the date of the original payment. There are no specific timelines to report a change without penalties. Importers are, however, expected to report the adjustments as soon as they are in effect.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Additional duty owed: Late payment interest at 2% of the duty owed per month, payable from the date the duty was due. Additional excise duty, VAT, Import Declaration Fee and Railway Development Levy owed: Late payment interest at 1% of the amount due per month and penalty of 5% per month. False declarations of customs value may also result in fines of up to USD 10,000. Filing a voluntary disclosure may reduce penalties.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A There is no formal procedure. Generally, the importer should write a letter to the customs authorities disclosing the change in the reported customs value. The customs authorities will compute any duties payable and a payment authorization form will be issued. In the case of a decrease in the reported customs value, the importer may apply for a refund of the overpaid custom duties. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional VAT filings are required. VAT and other equivalent taxes are paid with the import duty.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional VAT filings are required. In the unlikely event that the customs authorities accept a decrease in customs values due to a retroactive transfer pricing adjustment, the importer may make a claim for a VAT refund, as long as the input VAT has not been claimed by the importer.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A If additional VAT is owed, penalties of 1% of the amount owed per month, payable from the date the VAT was due, will apply together with a late payment penalty of 5% of the amount due.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, input VAT may be claimed if input deduction requirements are met. However, in practice, any additional payments made outside the import entry are currently not recognized by the electronic tax system where VAT returns are filed.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. No set threshold exists. The customs authorities maintain a valuation database against which they monitor unexplained differences. It is recommended that the importer proactively contact the customs authorities before importing, particularly if the customs value decreases.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, during an audit of the company's transfer pricing activity, the income tax authorities may request the values that are reported for customs purposes and seek a reconciliation.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Luxembourg

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A Possibly. This would need to be negotiated with the customs authorities on a case-by-case basis.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may require the invoice, commercial documents, or intercompany agreements. It is recommended to conduct a test/analysis.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No. The customs authorities take a case-by-case approach.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Possibly. This would need to be negotiated with the tax and customs authorities on a case-by-case basis.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. However, in practice, this is not common. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 3 years from the date of the taxable event, or 10 years in cases of fraud or other criminal activity.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Penalties of 2 times the additional duty owed, plus interest of 9.6% per year, may apply. If a voluntary disclosure is made, penalties may be reduced or eliminated, except in cases of obvious negligence or fraud.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A The importer should notify the customs authorities and file an additional customs declaration. The customs authorities would then provide guidance on how to proceed.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Transaction-by-transaction or aggregate, depending on the requirements of the customs authorities involved. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A An amended VAT return must be filed in addition to the customs declaration. The import VAT declared would be creditable on the same return according to the importer's overall VAT recovery rate.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A An amended VAT return must be filed in addition to the customs declaration. The import VAT declared would be recoverable on the same return according to the importer's overall VAT recovery rate.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Value increase and decrease: Yes. Penalties and interest may apply on a case-by-case basis.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes. However, if the importer is not entitled to fully deduct VAT, any additional VAT due would yield an additional cost.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A No. It is recommended that the importer proactively contact the customs authorities to discuss prospective transfer pricing adjustments if the price change is significant.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No. However, valuation in general is an area of increased focus by the customs authorities.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

Malaysia

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may request transaction documentation on an unrelated party transaction. While a test or analysis would help support the related party price should it be questioned by the customs authorities, no specific guidelines have been published.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. However, there is precedent for the customs authorities to measure a company's profit margins against the profit earned by a set of benchmarked companies that operate within the same industry or engage in the sale, manufacture, or distribution of the same class or kind of goods.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. However, separate agreements may be achieved with each authority though the methodologies will differ.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report if the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report if the duty rate is 0. The importer may apply for a duty/tax refund. However, in practice, duty/tax refunds are difficult to obtain.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. However, in practice, duty/tax refunds are difficult to obtain. Claims for refunds must be made via a prescribed JKED 2 form.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: Generally, 6 years from the date the customs duty was payable or the deficient duty amount was paid. There is no time limitation if fraud or tax evasion is involved. Duty refunds: Within 1 year of the date of overpayment to the customs authorities. Beyond 1 year, an application for a refund may be made to the Ministry of Finance.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Typically, no. However, if no corrective declaration is filed, the importer may be convicted of a misdeclaration and may be jailed for up to 5 years and/or receive a fine of up to RM 500,000. In practice, undeclared decreases in customs value do not typically attract penalties.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A In the event of either an increase or decrease, the importer should submit a letter to the customs authorities to seek guidance on how to proceed. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Typically, transaction-by-transaction adjustments are required. Aggregate adjustments may be permitted with agreement from the customs authorities. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A On 1 September 2018, a national sales tax system replaced the Goods and Service Tax (GST) system. Applicable GST (prior to 1 September 2018) or sales tax (from 1 September 2018) must be paid if the customs authorities issue a bill of demand.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No actions are mandatory. The importer may apply for a refund of sales tax paid (from 1 September 2018 forward). However, refunds are difficult to obtain.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A N/A. Malaysia abolished its GST regime in 2018. With respect to sales tax, any "short payments" that become owed due to an import value change do not attract additional late payment sales tax penalties.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A N/A. Malaysia abolished its GST regime in 2018. The Malaysian sales tax regime does not adopt an input tax credit. Any sales tax incurred will be incurred as cost.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. No set threshold exists. It is recommended that the importer obtain an advance valuation ruling with the customs authorities before importing at new prices or to write to the customs authorities to seek guidance/agreement on a preferred disclosure process.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

Mexico

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may request supplier agreements, contracts, and transfer pricing documents. In the event of an audit, the importer should conduct a customs study to determine whether the relationship influenced the purchase price. It is recommended to perform a test under the customs rules.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Yes. The customs authorities apply the circumstances of sale test, including reviewing normal pricing practices of the company's industry, sales by the seller to unrelated parties, and also whether the related party price was sufficient to recover the cost of goods plus a profit comparable to that earned during a representative period in the same class or category of goods.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. However, there is no guidance or administrative process regarding an approach to agree on a methodology. Therefore, it is uncommon.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes. Additional duties and taxes/fees would be payable, if applicable.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. There is more risk when changes are caused by penalties associated with incorrect value declarations for statistical purposes.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The process to request duty refunds is specific and must be made on a prescribed form.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: No time limitation. Duty refunds: 5-year statute of limitations might be considered. There are no specific time limitations for reporting a change. However, if an importer is reporting an increase in customs value, it is highly recommended that the adjustments be made before the annual tax period in order to process the adjustment for a deduction in a single customs declaration.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Additional duties owed: If the failure to correct customs registries because of an adjustment is found during an audit, fines may range from 130% to 150% of the unpaid duty amount, plus 55% of the unpaid customs processing fee and VAT. Any additional duty owed plus applicable surcharges and inflation adjustments must also be tendered. No duties owed: If the failure to report adjustments is found during an audit, a fixed fine ranging from MXN 2,330 to 3,310 per import declaration could be triggered. If the importer self-reports the adjustment before it is discovered during an audit, no penalties will apply, but inflation adjustments and surcharges on any underpaid amount should be paid.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A For upward or downward changes in value: The importer may submit a Customs R1 Form for transaction-by-transaction customs declaration amendments and amend the original invoice value attached to the custom declaration. For downward adjustments, if a refund is due, the importer must first obtain authorization from the customs authorities, and include an analysis and sufficient documentation to justify amending the declaration. For upward adjustments, no authorization from the customs authorities is required. An importer may use a Customs GC Form to file a consolidated amendment that covers multiple transactions. This should be completed before the importer submits its annual income tax return.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments are available for any customs value modification and an amended customs document must be generated for each transaction that is modified.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The monthly VAT declarations, as well as the customs documents, must be amended and the additional VAT owed must be paid. The importer is also required to support the increase in value and the additional VAT owed.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A The monthly VAT declarations, as well as the customs documents, must be amended, which will result in a credit of the overpaid VAT. The importer may request a refund instead of a credit. It is required to support the credit of the overpaid VAT.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: If the adjustment is discovered through audit by the customs authorities and additional VAT and customs processing fees are underpaid, a penalty of 55% of the additional VAT and customs processing fees owed may apply. Also, the additional VAT owed must be paid with an adjustment for applicable surcharges and inflation. If duties are underpaid, a penalty of 130% on top of the duty omission might be triggered. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. No set threshold exists. Prior to importing at the new prices, it is recommended that the importer obtain an advance valuation ruling with the customs authorities that would apply for the fiscal year.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Yes. The potential risks are the denial of the corporate tax deduction, and the rejection of the VAT credit. Additional implications may apply depending on the nature of the inconsistencies.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Morocco

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The transaction value will be accepted provided that an examination of the circumstances specific to the sale indicate that the relationship has not influenced the price. The customs authorities may review shipment documents, including the customs declaration, proforma invoice, final invoice, packing list, etc. Also, the customs authorities maintain an internal database of customs values in both local and foreign markets based on all available information (i.e., copies of invoices, price catalogs, administrative decisions, survey results, among other documents), which they will reference when evaluating import values.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. Amendments to customs values are not required or permitted in principle. However, a declarant may voluntarily adjust the custom values in certain cases. An informal process exists to make such requests, and they may be submitted no more than one month following the date of declaration. The customs regulations also include a procedure to obtain a ruling on customs value, if required. There remains a risk of fines or penalties if the importer does not voluntarily report.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. While amendments to customs values are not required or permitted in principle, a declarant may voluntarily adjust the custom values in certain cases to avoid future redeclarations by the customs authorities. There remains a risk of fines or penalties if the importer does not voluntarily report.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Generally, no. However, if a change in customs value results in a duty decrease before the goods have been released, the importer is entitled to pay the lower duty.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A In principle, once registered, the customs declarations can no longer be modified. However, an importer may voluntarily report changes to customs values in writing no more than one month following the date of the original declaration. Upon the authorization of the customs authorities, changes may be made without penalty only if a) the goods have not been released, or b) the customs authorities did not request a verification of the imported goods.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Generally, no. However, the customs authorities may apply an 8% interest rate on late payments of duties owed. In cases where an increase in customs value exceeds 20%, the fine increases to 3 times the amount of the unpaid duties and taxes.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Generally, if approved, changes to reported customs values require the importer to submit requested changes in writing no more than one month following the date of the original declaration. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A If approved, a transaction-by-transaction adjustment is required. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A No. The customs authorities will reassess VAT.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No. The customs authorities will reassess VAT.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A No.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A N/A

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

Netherlands

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. Transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method. While not determinative, if transfer prices meet the arm's length standard under transfer pricing laws, this may be taken to indicate that prices are uninfluenced.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A This depends on the nature of the request. (1) To support the existence of a sale: sales agreements, transfer pricing documents, and invoices; (2) To support the price actually paid or payable: transfer pricing documents, buy/sell agreements, invoices, proofs of payment, and financial statements; (3) To support additions/deductions to price: cost breakdowns and bills of materials. It is recommended to conduct a test/analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. An importer may choose the test it applies based on its circumstances and available data. The "circumstances of sale" (COS) test is more flexible compared to the more objective "test values" test.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. Importers may obtain separate rulings from the tax authorities (e.g., APA) and the customs authorities that are aligned.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. The "Dutch Handboek Douane" includes high-level guidance to the customs authorities and is publicly available. The EU Commission also published a "Compendium of Customs Valuation Texts" in 2024.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. The customs authorities view upward adjustments as always impacting the transaction value regardless of whether the adjustments are included in sales agreements, and despite the European Court of Justice's ruling in Hamamatsu Photonics Deutschland, C-529/16 (20 December 2007), which held that there is no general reporting requirement. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes. Required procedures must be followed.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. A failure to report may result in fines or penalties, but in practice, these are rarely assessed on decreases.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. It is easier to obtain refunds if changes stem from documented terms in a sales agreement or a clear error was made. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A It depends on the method used to import products. For provisional value declarations, corrections must be filed within 2 years. If there is an advance ruling from the customs authorities, recalculations must be filed within the specified timeframe. Otherwise, additional duty payments: 3 years from the date on which the debt was incurred, extended to 5 years for acts that may give rise to criminal prosecution. Duty refunds: 3 years from the date the debt is communicated to the importer. Penalties may apply regardless of the period if changes are not self-disclosed.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Monetary penalties, or the suspension or revocation of the importer's customs authorization, may apply. Interest may also apply. An importer may avoid fines and penalties by filing a voluntary disclosure before the customs authorities identify any errors in the reported customs values.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A If a sales agreement provided for retroactive adjustments and a provisional customs value was declared, a supplementary declaration may be filed following the adjustment. If a sales agreement provided for retroactive adjustments and an advance ruling was obtained, the importer may prepare and submit the recalculation. Otherwise, the transaction value may be considered an error and it is recommended to self-disclose the adjustment to mitigate the risk of fines and penalties. For "one-off" adjustments not included in sales agreements, self-disclosure is recommended, particularly if duties are owed. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Yes. Transaction-by-transaction corrections are not required. An importer can file a recalculation on a pro-rata basis and apply the average duty rate paid for all products affected by the adjustment in that particular period. The disclosure process is the same. For periodic adjustments, it is recommended to agree to a correction mechanism with the customs authorities in advance of importation to support corrections to declarations.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Additional VAT must be reported and paid. This amount can be refunded if the importer is entitled to an input VAT deduction and meets certain conditions. If the importer holds a deferment license, the VAT payment and deduction may be reported in the same VAT return.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A If the importer claims a VAT refund for a VAT amount that has already been deducted as input VAT, then the refund can only be obtained if that deduction is corrected. Therefore, no impact occurs if VAT was fully deductible. Under a deferment license, the correction must be adjusted in the same VAT return.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: Yes. Fines, penalties, and interest may apply to be determined on a case-by-case basis.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, if the consignee is entitled to fully deduct VAT. Under Dutch VAT Act, Art. 23, this can be executed in the same VAT return. Under Dutch VAT Act, Art. 22, an assessment must first be paid with potential interest and penalties. The VAT paid can then be deducted as input VAT in the next VAT return if the consignee has the right to a deduction. This will result in a cash flow impact. In both cases, an additional VAT cost will apply if the VAT cannot be fully deducted.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. No set threshold exists. It is recommended that importers obtain an advance valuation ruling before importing at new customs values to confirm the new transfer prices comply with applicable related party value requirements.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, it may trigger increased scrutiny from the tax and customs authorities if inconsistent.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. However, in practice, requirements for adjustments are not enforced.

New Zealand

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method. The Customs and Excise Act 2018 specifically requires an importer to submit the APA/transfer pricing documentation in cases where the import value changes post-importation and the importer would like to use the new "provisional value" rules.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Currently, there is no published list of evidence that the customs authorities will accept. However, in practice, the customs authorities will generally accept transfer pricing documentation and/or a benchmarking study if based on each transaction. It is recommended that the importer maintain transactional documentation to support the related party price (e.g., invoices from sales to unrelated parties).

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes, in certain circumstances. An importer may obtain a binding ruling from the customs authorities to support a valuation methodology. The Customs and Excise Act 2018 specifically provides for the customs authorities to liaise with Inland Revenue to confirm the appropriateness of an APA or transfer pricing methodology.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. However, guidance materials are limited.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. A failure to report may result in penalties and/or compensatory interest, even if the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. A failure to report a decrease in the price may result in penalties, but no compensatory interest.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: Importers should notify the customs authorities either by making a voluntary disclosure when the adjustment takes place or the importer should register under the provisional value program to report customs value adjustments. Generally, under the provisional value program, the adjustment must be filed within 12 months after the end of the financial year in which provisional declarations were made. Failure to do so may result in penalties and compensatory interest. Duty refunds: Generally, refund applications can be made within 4 years after the duty has been paid. In cases of fraud, there is no time limitation for the application of penalties.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. If no duties are owed, no penalties will apply. If duties are owed and not paid by a certain payment date, for the first 1 to 7 days outstanding, 1% of the unpaid amount will be assessed. For 8 or more days outstanding, an additional 4% of the unpaid amount will be assessed. Compensatory interest may also apply. In addition, administrative penalties can be assessed in certain cases. In cases of fraud, higher fines may be assessed.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Importers who anticipate customs value changes should enroll in the provisional value program, which requires importers to file a reconciliation letter typically within 12 months. This letter should include the total final value for the specified financial year, supporting documents (such as contracts and invoices), and a completed refund form (if applicable). If an importer is ineligible to enroll in the provisional value program, or chooses not to, it is still required to make a voluntary disclosure to correct the declared customs values.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Adjustments are generally made on a transaction-by-transaction basis. However, where it is not possible, the customs authorities may accept aggregate adjustments, as determined on a case-by-case basis. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. There is a provisional value program that allows importers to file a preliminary customs value and finalize that value within a specified timeframe. Importers must qualify to participate in this program. If the importers do not qualify for the provisional value program, they will need to declare the changes through the voluntary disclosure process.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional Goods and Services Tax (GST) filings are required. The additional GST must be paid to the customs authorities and should be recoverable in the importer's GST return, if registered.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional GST filings are required. The importer may request a refund of overpaid GST provided that the importer is not already registered for GST. If the importer is registered for GST, the overpaid GST would be claimed as an input tax deduction and, therefore, no refund would be granted.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No, unless the importer applies for a binding ruling. Importers may, instead, elect to participate in the provisional value program, which allows them to finalize customs values within a defined timeframe. The binding ruling process involves a more extensive review by the customs authorities and requires substantial supporting information and documentation.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. There are generally limited risks from a corporate tax perspective. However, either the customs authorities or tax authorities may still question why different values are reported. Also, the customs legislation specifically requires the customs authorities to consult with the tax authorities to determine the appropriateness of the transfer pricing arrangement if the importer submits transfer pricing documentation when enrolling in the provisional value program.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. However, in practice, this is not often done.

Nigeria

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, a transfer pricing study may contain information that is useful for supporting the transaction value. APAs are not available in Nigeria.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may request a proof of payment (e.g., a commercial invoice), contracts, an attestation that the related prices are accurate and the only basis for valuation of the transaction, and/or any additional supporting documentation that can verify that arm's length pricing requirements are met. An analysis to substantiate the arm's length nature of the related party price is recommended.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A Yes. The customs authorities reference prices in their own database. In the absence of reference price data, the circumstances of sale test is used.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. However, the customs authorities can conduct post-clearance audits. If the importer has underdeclared customs values, it is liable for the underpaid duties plus penalties of 25% of the underpaid dutiable value and a fine of NGN 2 million and/or 2 years imprisonment.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No, and there is no risk of fines or penalties.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A However, in practice, duty refunds are difficult to obtain. There are no formal procedures in place.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and refunds: The customs regulations do not set forth a period of limitations in either case. There are currently no penalties for reporting a change in customs value. There are no time limitations for making additional duty payments or requesting duty refunds.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A No. The customs regulations do not set forth a penalty regime.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A A formal letter to the customs authorities supported by relevant documentation is sufficient. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Generally, the disclosure of customs value changes are required on a transaction-by-transaction basis. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A VAT owed will be collected by the customs authorities. An additional filing is not required; however, the importer should submit a formal letter to the tax authorities to disclose the adjustment.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A An additional filing is not required unless the importer is unable to take a credit on its regular VAT filings, in which case the importer would need to notify the tax authorities of an additional VAT claim.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Yes. No set threshold exists. It is recommended that the importer proactively contact the customs authorities to discuss managing customs values due to prospective transfer pricing adjustments.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Yes.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

Norway

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may require transfer pricing documents and data, supplier agreements, accounting documents, and/or any documented related-party service agreements. It is recommended to conduct a test that will support related party prices based on available accounting/financial data.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. Testing is performed on a case-by-case basis, based on the circumstances of sale. If the importer can demonstrate that the import price approximates the customs value of identical or similar goods, the transaction value is accepted. If not, the customs authorities will investigate the facts surrounding the sale, together with relevant documentation.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. However, there are no formal procedures that govern how the tax and customs authorities would arrive at the same price. Assessments are made on a case-by-case basis.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No. The customs authorities have not provided guidance on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective. However, the customs authorities have released high-level comments confirming that transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. The customs authorities can impose a minor fine for incorrect declarations.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: Importers have up to 3 years from the date of filing. The customs authorities have up to 5 years from the end of the calendar year, at which time the standard time limit for completing a determination expires. This will be extended to 10 years if additional duty is due or if a criminal complaint for evasion is filed.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Fines of NOK 1,243 to NOK 12,430 may be imposed for filing incorrect value declarations for a first-time violation. Value increase: Interest will also apply. The customs authorities can impose an additional amount at 20% of any underpaid duty. Such additional penalties can be avoided by voluntarily correcting the customs declaration. Value decreases: No penalties will apply, but there may be minor administrative fines.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, all corrections must be filed on a transaction-by-transaction basis and submitted electronically in the customs system. Importers may also apply for an uplift agreement (to postpone a value determination) if the final customs value is unknown at the time of importation. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Corrections must be made on a transaction-by-transaction basis for each customs declaration. Aggregated retroactive adjustments will not be approved. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No. While the importer can enter into an uplift agreement with the customs authorities for a postponed value determination to avoid penalties in the event of an audit, the importer must still correct each customs declaration.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Import VAT reporting is subject to reverse charge. The taxpayer should calculate and report both the output import VAT and input (deductible) import VAT in the VAT return. Any additional import VAT owed must be included (and deducted) in a corrected VAT return for the respective VAT period.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A An amended VAT filing is required to reflect the revised amount, but the difference in VAT is not deductible.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A No, as long as the importer is entitled to fully deduct import VAT or if customs values decrease. If the importer cannot fully deduct the import VAT, interest may apply on the import VAT that is not deductible.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Any additional import VAT will be calculated under the reverse charge mechanism, meaning the import VAT calculation and corresponding recovery are corrected on the historic VAT returns.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. Significant changes to transfer pricing may invite scrutiny. There is no formal process to proactively address this with the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Generally, yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. However, the risk related to non-compliance is considered low due to a lack of enforcement.

Panama

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Customs regulations do not require customs values to be adjusted for retroactive transfer pricing adjustments. The customs authorities do not generally question related party sales unless a doubt arises as to the acceptability of the price. When questions arise, the importer will have the opportunity to demonstrate that the originally declared transaction value closely approximates a "test" value previously accepted by the customs authorities. If a "test" value is not available, the importer can demonstrate the price is acceptable under the circumstances of sale tests. The customs authorities may review intercompany contracts, shipment documents detailing the transaction, and/or proofs of payment (e.g., a credit note).

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A There is no preferred method. If the customs authorities have any doubts about the customs value, they may request contracts, proof of payment, accounting records, and commercial information, among other documents, at their discretion.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, not for retroactive transfer pricing adjustments. However, corrections must be reported for other cases in which customs values may be incorrect (e.g., misdeclaration of value).

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A No, not with respect to retroactive transfer pricing adjustments because no reporting is required. Yes, in the case of other increases in customs value.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, not with respect to retroactive transfer pricing adjustments. However, importers must report the correction of an error, if applicable, under the customs value regulations. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A No, because there is no obligation to report a change in customs values due to a retroactive transfer pricing adjustment. However, when a change is made that is governed under customs value regulations, it must be reported.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A N/A, because customs values are not required to be changed due to retroactive transfer pricing adjustments.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A No. However, if the customs authorities require changes in customs values upon audit, they could impose surcharges and interest on duties owed. Interest and penalties will apply if the customs authorities find that the customs value was intentionally misdeclared to avoid taxes and fees.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A No, with respect to retroactive transfer pricing adjustments. With respect to other customs value corrections, the importer's broker may submit a request to amend the customs declaration through SIGA, the customs electronic reporting system. The reason for the change must be explained. The customs authorities will consider the request and decide on the new customs value. Afterwards, an importer has 3 business days to request reconsideration, if it chooses, without penalty. An importer also has the option to appeal any reconsideration results within 5 business days after the notification of the initial decision.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A No, with respect to retroactive transfer pricing adjustments. With respect to other customs value corrections, transaction-by-transaction adjustments are required.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A N/A, because customs values are not required to be changed due to retroactive transfer pricing adjustments.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Import VAT is treated the same as customs duties. Additional import VAT would become payable. No with respect to retroactive transfer pricing adjustments. With respect to other value corrections, the importer's broker may submit a request to amend the customs declaration through SIGA.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Import VAT is treated the same as customs duties. Additional import VAT would become payable. No with respect to retroactive transfer pricing adjustments. With respect to other value corrections, the importer's broker may submit a request to amend the customs declaration through SIGA.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A No. However, if the customs authorities, upon audit, require changes in customs values, they could impose surcharges and interest on duties owed. Interest and penalties will apply if the customs authorities find the customs value was intentionally misdeclared to avoid taxes and fees.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. However, if the customs authorities have reasonable doubts concerning the customs values declared, the customs authorities can request that the importer provide additional information or documents to support the declared values.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A The tax authorities require that these values match, as these values will probably result in deductible costs for income tax purposes. Article 65 of Executive Decree No.170 of 1993 establishes that values used for imported goods in inventory should include the transfer pricing, import duties, other applicable taxes, the cost of transportation, and any other costs incurred in order to transport the merchandise to Panama. However, there is no risk if there is a difference in prices, unless the customs authorities determine the values to be fraudulent, in which case the importer can be subject to penalties.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

Peru

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may require invoices, price lists, accounting documents, and banking documents, as well as other transaction documents deemed necessary to support the related party prices. It is recommended to conduct a test/analysis.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A Yes. The customs authorities will compare the importer's prices to reference prices in the customs authorities' own databases.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No. The tax and customs authorities operate as two branches under the same authority, but use separate methodologies to evaluate pricing. There are no procedures to coordinate decision-making.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. However, in practice, refunds may be difficult to obtain. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 4 years from 1 January of the year following the declaration date. There are no specific time limits to report changes without penalty. When duty payments are owed, fines could be up to double the unpaid amount if the customs declaration is amended after the customs authorities notify the importer of their awareness of the change.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Penalties amounting to 2 times the additional duty owed may apply. If a voluntary disclosure is made before a notification from the customs authorities is received, penalties will be reduced to 50% of the original penalty assessment. The interest rate will depend on the date of commission of the infraction and would apply to additional duties and penalties owed.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Value increase and decrease: The importer may submit an electronic correction to the original declaration with supporting documents through its customs agent and pay any additional customs duties and penalties. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A No additional VAT filings are required. The change in customs value will automatically trigger changes in the VAT assessment.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No additional VAT filings are required. However, if the importer voluntarily reports a decrease in the customs value, it must first make an electronic correction to the customs value and then formally request a VAT credit because a downward adjustment will not automatically result in a VAT credit.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Value increase: Yes. Penalties of 50% of the additional VAT owed may apply. If a voluntary disclosure is made before any tax authority notification, penalties may be reduced to 5% of the original penalty assessment. Value decrease: No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Yes. No set threshold exists. It is recommended that the information and support for making a prospective adjustment be appropriately documented and maintained.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No. However, in practice, the two values should be consistent because the tax authorities may issue penalties based on the discrepancy.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Yes.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A Yes.

Philippines

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Primarily the transfer pricing study. The customs authorities may also require additional supporting documents pertaining to circumstances surrounding the sale, or may refer to third party sources to verify the data presented in the transfer pricing study.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. The customs authorities may use a combination of methods to test related party values depending on the particular circumstances of the transactions.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. Filing a prior disclosure pursuant to the new Tax Reform for Acceleration and Inclusion Act effective 17 December 2017 remains voluntary, although it is recommended to mitigate potential penalties. The Prior Disclosure Program imposes a 10% penalty due to new customs regulations.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, and there is no risk of customs fines or penalties and minimal risks for import VAT penalties.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A No. While the Customs Modernization and Tariff Act allows for refunds, such recourse is only available for those considered as erroneous declarations. Note that transfer pricing adjustments do not fall strictly under the scope of an erroneous declaration. Therefore, there is currently no record of importers who have been able to obtain refunds an overpayment of duties arising from transfer price adjustments.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: Generally, 3 years from the date of payment. There is no time limitation in cases of fraud. Duty refunds: 12 months from the date of payment. An importer may make changes or amendments within 3 years. However, penalties will apply if there was an underpayment of duties or taxes.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A If duties are discovered to be owed during a post-clearance audit, the importer may be liable for a penalty of 125% of customs value and 20% interest per year from the date of final assessment. If a voluntary disclosure is made under the Prior Disclosure Program, penalties may be reduced to 10%.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A If the adjustment results in an increase, the importer should send a letter to the Commissioner of Customs, in accordance with the Prior Disclosure Program, amending the affected entries and tendering the duty owed. This program is not available if the importer is under prior investigation. If the adjustment results in a decrease, the adjustment must be requested in writing and forwarded, together with the supporting documents, to the Collector of Customs to whom such duties were paid. If found correct and in accordance with law, a recommendation will be forwarded to the Commissioner of Customs for final review and approval of the refund. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The quarterly VAT return should be amended to reflect the correct amount of import VAT and filed with the tax authorities. Any additional VAT owed must be paid.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A The quarterly VAT return should be amended to reflect the correct amount of import VAT, and the taxpayer may file for a VAT refund for the erroneous payment of taxes. Obtaining a VAT refund is a very difficult and lengthy process.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: Yes. If the adjustment is discovered upon audit, penalties of PHP 1,000 to PHP 50,000, plus interest of 12% of the VAT owed, per annum, may apply. A 50% surcharge may also apply if the VAT-related adjustment is more than 30% of the original VAT base.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. However, if the value reported significantly differs from the prior reporting period, it may invite scrutiny during a customs audit or post-entry verification. There is no process to proactively address this with the customs authorities. It is recommended, however, that the information and support for making a prospective adjustment be properly documented and maintained.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

Poland

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A There is no official set of documents or other evidence that the customs authorities require to substantiate the related party price, but they may examine the transfer pricing documents. It is highly probable that the customs authorities will not consider an analysis performed by the importer.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Yes. Generally, the customs authorities will compare an importer's prices to reference prices in their own customs database.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. However, the customs authorities may consider the approved transfer pricing methodology as a factor in supporting the price. Moreover, as of March 2017, the customs authorities and tax administration have merged into one government agency, which has increased, to some extent, the level of cooperation. This could potentially result in the customs and tax authorities cooperating more closely with respect to customs valuation.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A There is no formal law requiring reporting, but in practice, yes, because the customs authorities will review transfer pricing adjustments on a case-by-case basis to determine whether the change impacts the customs value. There is no exception to report when the duty rate is 0. If the duty rate is 0, the risk of fines/penalties is lower.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. Also, if the duty rate is 0, the risk of fines/penalties is lower.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, but only if the customs authorities approve the refund based on a case-by-case analysis. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 3 years. This time limitation may be extended in cases of fraud. Duty refunds: Generally, 3 years. In general, there are no specific time limitations for reporting a change without penalty. Penalties may be avoided where a voluntary disclosure is filed with the customs authorities before they become aware of the change. As a rule, penalty interest will always apply, regardless of the time of reporting. Interest charges owed may be reduced by filing expeditiously.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Interest may also apply (currently 7.75% per day). If criminal acts are involved, penalties of up to approximately EUR 8 million and imprisonment of up to 5 years may apply.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A For both increases and decreases, the importer should file an application to amend the import declaration and submit an explanatory letter to the customs authorities. The customs authorities will then issue a decision. If an adjustment is discovered upon audit, the customs authorities will amend the import declaration. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional VAT filings are required. The customs authorities will issue a decision, and any additional VAT owed must be paid. A disclosure for VAT purposes may be filed to mitigate the risk of fines and penalties. Hypothetically, an action to split import customs and import VAT reporting could be attempted, but risks being challenged.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A A separate application must be filed with the tax authorities in order to obtain a VAT refund, which is available provided that the import VAT has not already been recovered.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increases and decreases: Standard interest rate of 14.5% will apply (interest rates fluctuate), with two exceptions—(1) the applied rate may be decreased to 50% of the standard rate if the importer voluntarily amends the customs declaration within 6 months and pays any outstanding VAT payments within 10 days of receiving the tax authorities' decision, and (2) the applied rate may be increased to 150% of the standard rate if the importer is required to pay any outstanding VAT due to the results of an audit. If criminal actions are involved, additional penalties and/or imprisonment may apply.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, if standard import VAT deduction requirements are met. In addition to any cash flow cost, importers should also consider the cost of VAT penalty interest.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. No questions should be raised if the adjustment is reasonable. No specific threshold is published. It is recommended that the importer be prepared to support the related party pricing and prospective adjustment before filing the import declaration.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent. An inconsistency may draw scrutiny and the tax authorities may assess fines or penalties.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A There is no formal law requiring reporting, but in practice, yes. The rules for determining import versus export values differ, and the customs authorities tend to be more liberal with export values with respect to enforcement.

Portugal

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may require transfer pricing reports. It is recommended to conduct a market analysis that shows that the intercompany prices are in line with market prices.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No. However, the customs authorities generally prefer to use the circumstances of sale test and, in particular, review related and unrelated party prices that occur at the same commercial level under similar circumstances. They will also consider additional data provided by the parties and customs records.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Generally, no. However, in theory, it should be possible to get the customs and tax authorities to both agree on the same price for corporate tax and customs value purposes. No cases have been identified in which such an agreement was concluded.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes, as long as the importer can provide proof to support the claim. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 3 years from the date of the taxable event. There are no time limitations for reporting a change without penalties.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Penalties and interest may apply. If a voluntary disclosure is made, penalties may be reduced. Value increase: Penalties may range from EUR 500 to EUR 165,000. Value decrease: Penalties for an inaccurate declaration may range from EUR 150 to EUR 5,750 per transaction.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A The importer should contact the customs authorities to seek guidance on how to proceed.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Transaction-by-transaction or aggregate, depending on the requirements of the customs authorities involved. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A There are two possible scenarios: (1) The importer may opt to file a corrected customs declaration, and the customs authorities will then issue a VAT assessment for payment; or (2) The importer may opt to reverse charge VAT due on the importation after correcting the customs declaration, and an amended VAT return must be submitted to correct the VAT reverse charge.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No additional filings are required. However, a request must be made to obtain a refund of any overpaid VAT through the filing of the VAT return.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Value increase: Yes. Penalties of 30% to 100% of the VAT owed (with a maximum of EUR 45,000 per penalty), plus interest of 4% per annum, may apply. If a voluntary disclosure is made, penalties may be reduced. Value decrease: No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Possibly. Additional VAT paid for the import may be deducted on the VAT return if the taxpayer has customs documents that demonstrate that the import VAT was correctly paid on taxable activity.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Possibly. No set threshold exists. It is recommended that the importer have advance discussions with the customs authorities given that the tax and customs authorities were merged in 2012, and transfer pricing topics are a priority for both authorities.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No. However, in practice, the two values should be consistent because of the potential risk that the tax and customs authorities may exchange information and reject/amend either the taxpayer's taxable basis or customs values.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Yes.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A Yes.

Romania

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A Generally, the customs authorities may compare the related party prices with prices of similar or identical products imported by other importers in the same period or may ask the importer to conduct such comparisons. A test/analysis is recommended only in cases when the customs authorities have doubts about the acceptability of the related party prices.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A Generally, the customs authorities request importers to justify customs values under the test values test, pursuant to Article 134 of the Implementing Regulation (EU) 2447/2015.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 3 years. There are no specific time limitations for reporting a change without penalty.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Interest is set per Article 114 of the EU Union Customs Code (e.g., 9% in January 2024) and penalties are 0.1% per day. Fines may also apply. Filing a voluntary disclosure would not eliminate or reduce the applicable penalties, fines, or interest.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Value increase and decrease: The importer must submit a letter to the customs authorities detailing the change in customs value and listing all affected transactions. The customs authorities will issue a decision to indicate the amount of duty and VAT owed or to be refunded. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Aggregate adjustments are permitted. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A No additional VAT filings are required. However, the VAT adjustments would need to be declared in the VAT return if the importer is registered for VAT. Any additional import VAT paid when the customs declaration is amended would be deducted accordingly on the VAT return. If the importer is not registered for VAT, a request for a refund may be submitted pursuant to the 9th/13th Council Directives.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A No additional VAT filings are required. However, the VAT adjustments would need to be declared in the VAT return if the importer is registered for VAT. Any overpaid import VAT determined by the customs authorities to be refundable will be refunded, and this amount will need to be reported as a settlement of deductible VAT in the VAT return.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Value increase: Maybe. Late payment interest of 0.2% per day and penalties of 0.1% per day of delay will apply unless the importer has a VAT deferment certificate. Value decrease: No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Possibly. No set threshold exists because it depends on the local customs authorities' review. It is recommended that the importer proactively contact the customs authorities before making the prospective transfer pricing adjustment.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A Yes.

Saudi Arabia

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may review the transaction value of identical or similar goods across all importers. It is recommended to conduct a test/analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. However, the customs authorities generally follow the guidelines outlined in the World Trade Organization Valuation Agreement.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. The customs authorities have not issued any guidance in this area. The tax authorities have published new guidance on transfer pricing, but the practice between the customs and tax authorities regarding valuation remains unclear.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No. In practice, the customs authorities may reject a transaction value for related party sales if it is deemed unacceptable.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. However, it is recommended to report to avoid any customs valuation issues and penalties in the event there is a post-clearance audit.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. However, it is recommended to report to avoid any customs valuation issues and penalties in the event there is a post-clearance audit.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Possibly. Importers may discuss customs duty refunds with the customs authorities on a case-by-case basis.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 5 years from the date of importation for mainland entities or 10 years for Free Zone entities. Duty refunds: on a case-by-case basis.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Generally, if an incorrect customs value is discovered upon audit, and the goods are subject to customs duty, then 5% customs duty plus 10% penalty based on the value of the goods will apply. If there are no customs duty implications, then a fine of not less than SAR 500 and not exceeding SAR 5000 would apply, unless fraud is involved.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Value increase and decrease: Importers should submit an official request that explains the adjustment, the basis for the adjustment, and notes the company's readiness to tender any resulting taxes owed. The request process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A N/A

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A N/A

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The tax authorities have not published any clear process guidance. In practice, it is recommended that taxpayers report adjustments to the tax authorities to avoid the risk of fines, particularly in cases where additional import VAT may be payable.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A It is recommended that adjustments be reported to the tax authorities to avoid any risk of fines.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A In general, no. However, the VAT law states: (1) Tax evasion is punishable by a fine of not less than the amount of VAT due, and not more than 3 times the value of the goods or services that are the subject of the evasion; (2) An incorrect VAT return filing, an amendment after filing, or the filing of any document with the tax authorities in relation to VAT that results in an under-calculation of the VAT owed may result in a fine equal to 50% of the additional VAT owed; and (3) A person who fails to pay VAT due by the payment date shall be liable to a fine equal to 5% of the value of the unpaid VAT for each month, or part thereof, for which the VAT has not been paid.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A No. The VAT laws do not address the treatment of additional VAT paid due to an increase in the customs value resulting from transfer pricing adjustments.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A The practice of the customs authorities remains unclear. It is recommended that importers notify the customs authorities of any changes in value that increase the customs value to minimize any risk of fines.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Yes. In practice, if there is a discrepancy, the tax authorities will make an adjustment to the amount that has been reported in the tax return. The tax authorities will disallow the deduction for import (foreign purchase) if the value reported for tax purposes is higher than the reported customs value. Conversely, the tax authorities will impute a deemed profit if the import (foreign purchase) value reported for tax purposes is lower than the reported customs value.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No. However, in practice, the transaction value applied between related parties may be rejected if it is deemed unacceptable.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

Serbia

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A Generally, yes. A transfer pricing study may be used to support the use of transaction value. APAs are not available.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may require a transfer pricing study, contracts between the related parties, shipping documents detailing the transaction, and/or a proof of payment (e.g., a credit note). If the customs authorities do not find this documentation sufficient, a test and/or analysis to support the use of the transaction value is recommended.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Generally, yes. It is unlikely that the tax authorities will challenge the value determined by the customs authorities.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A In principle, yes, and there would be no exception to report when the duty rate is 0. However, in practice, the customs authorities rarely consider subsequent value adjustments of imported goods because the value is primarily determined at the time of importation.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. In theory, there would be no exception to report when the duty rate is 0. However, in practice, the customs authorities rarely consider subsequent value adjustments for imported goods because the value is primarily determined at the time of importation.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The process is the same. The importer must submit a refund request within 12 months of the day it became aware of the value decrease.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 5 years from the date that the customs debt arose. An importer has 8 days from the date of notification of a customs debt to submit payment. Duty refunds: Within 3 years from the date that the customs debt arose. Refunds are typically issued within 30 days of the date of request. There are no specific time limitations for reporting a change without penalty.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties of 1 to 4 times the amount of the customs duties owed, with the maximum penalty not to exceed EUR 80,000. Duties owed may also be subject to a 13% interest rate.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer should submit a letter with supporting documents and a new customs declaration for review by the customs authorities. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, the disclosure of customs value changes are required on a transaction-by-transaction basis. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The importer may, but is not obliged to, adjust the amount of import VAT in the VAT return for the period in which change occurred after the customs authorities issue a new customs debt calculation.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A The importer should adjust the amount of import VAT in the VAT return for the period in which the change occurred after the customs authorities issue a new customs debt calculation. Also, the importer must submit a written request to the tax authorities to claim a refund of the overpaid import VAT amount.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Generally, yes. The taxpayer may deduct any additional VAT incurred provided that the conditions stipulated by Article 28 of the Serbian VAT Law are met. Specifically, the imported goods must be intended for use in taxable supplies of goods and services, and the taxpayer must have documents confirming VAT payment during importation. Once these requirements are met, the deduction may be taken within the respective tax period.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. There is no formal process.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A No.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes.

Singapore

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful. The importer must explain how the study can be relied upon.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A An importer may be required to provide documents such as the sales contract reflecting pricing terms, the commercial level of sale, etc., value, a transfer pricing policy, benchmarking study, and explanations of how such policy is applied to determine the price. A separate test or analysis is recommended.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. However, in practice, the "circumstances of sale test" is most common.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. No formal procedure exists nor is anticipated in the near future.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. An e-Tax Guide, "GST: Transfer Pricing Adjustments," sets out the tax and customs authorities' position on the treatment of transfer pricing adjustments and the compliance obligations of taxpayers and importers. It provides for an administrative concession against filing corrections when retroactive transfer price adjustments are made if certain conditions are met. If the concession does not apply, importers and taxpayers should make a voluntary disclosure. Importers and taxpayers must self-assess whether they qualify for the administrative concession. It is highly recommended to undertake a detailed qualification assessment.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Possibly. The customs authorities provide an administrative concession that specifically allows importers to avoid declaring corrections if the importer qualifies for the concession. Otherwise, a voluntary disclosure may be required. There is no exception to report when the duty rate is 0 as GST will apply, with few exceptions. The only exception to this is where the administrative concession applies. Fines and penalties may otherwise be applied for failure to disclose upward adjustments.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Possibly. If the adjustment results in additional duties/taxes/GST owed, importers must file a short-payment permit and tender amounts due. However, if the goods are non-dutiable only GST applies, and an administrative concession, then no correction or further GST payment is due.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Possibly. No additional reporting is required if the adjustment relates to non-dutiable goods that are subject to GST, and for an administrative concession. If the concession does not apply, importers should file a voluntary disclosure. In practice, there is low risk of penalties if an importer fails to report a decrease.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. The importer will need to apply to the customs authorities and justify the transfer pricing adjustment to obtain the duty refund. Applications are processed and determined based on their merits. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: No time limitation applies. The customs authorities can demand underpaid or erroneously refunded duties within 5 years from the event. Duty refunds: Within 5 years from the date of overpayment. There are no time limitations for reporting a change without penalty. In practice, no penalties will apply if an importer files a voluntary disclosure prior to the start of any audit.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Any incorrect declaration constitutes an offense under the Customs Act and upon conviction, can result in fines of up to SGD 10,000 and/or imprisonment for up to 12 months. Offenses can be compounded by a sum not exceeding SGD 5,000 per incorrect declaration. Interest may also apply. In practice, fines and interest are typically only applied in cases of high culpability. An importer can avoid fines by filing a voluntary disclosure prior to the start of an audit or investigation. Penalties will apply in cases of fraud and willful default if pricing changes are discovered during an audit or investigation and if there is a duty/tax impact.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Value increase and decrease: Absent an administrative concession to avoid reporting, any change in customs value must be disclosed by submitting a voluntary disclosure and either a short-payment permit to pay duties/taxes due or a refund application to obtain a refund. The disclosure process is the same. However, if based on a retroactive adjustment, the disclosure must include transfer pricing documents and studies together with an explanation as to why the adjustments would bring the customs value to an arms length value.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, permit-by-permit adjustments are required. Aggregate adjustments may be filed if the customs authorities agree. This would require a single supplementary short-payment permit and the identification of all individual impacted import permits. For transfer pricing adjustments that are not attributable to specific import entries throughout the year, the customs authorities will accept a single supplementary short-payment permit.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. Barring the application of an administrative concession to avoid reporting, companies may file a voluntary disclosure.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A A short payment permit that includes both duty and import GST shortfalls must be filed with the customs authorities. Any additional import GST owed may be claimed as an input tax credit if input tax recovery rules are met. If the net GST impact is less than SGD 3,000 for all of the affected accounting periods, and the total non-GST amounts in error for each period is not more than 5% of the total value of supplies declared in the GST return, the adjustment may be reported on the next return. Otherwise, the adjustment should be voluntarily disclosed.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A If the importer is not a GST-registered business, it may claim a refund of overpaid import GST by filing an application to the customs authorities. For GST-registered businesses that have previously claimed the full amount of import GST, no refund will apply. However, GST returns will need to be amended (if no administrative concession applies) by filing a GST F7 form to correct the errors in the relevant accounting period when the error was made. Errors must be corrected within 5 years from the end of the GST accounting period. If errors are corrected after 1 year from the end of the GST accounting period, penalties may be imposed.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Generally, no penalties will be imposed on GST adjustments if they are made in accordance with the requirements in the e-tax Guide, payments are tendered, and the importer cooperates with the authorities. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. The taxpayer may claim the additional tax paid in GST returns for the prescribed period when a short-payment permit is filed and the shortfall is tendered.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No, with the exception of certain categories subject to ad valorem duties. All other categories of dutiable goods are assessed on a specific rate basis per unit of measure, not customs values. For goods subject only to import GST, prospective adjustments typically do not invite scrutiny.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, if the customs authorities identify a significant variance between the two values, the importer may be required to explain the discrepancy. Then there will be a potential exposure for additional customs duties, import GST, and penalties.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Generally, no for non-dutiable products. Occasionally for dutiable products.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Generally, no. However, the exporter will need to make GST adjustments in their GST returns and maintain sufficient supporting documents.

Slovakia

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs normally contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A Generally, an invoice is sufficient. However, if prices vary widely from similar imports, additional documentation, including the transfer pricing analysis, may be requested by the customs authorities. An analysis to substantiate the arm's length nature of the related party price under the customs rules is recommended, but not required.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A Yes. The customs authorities typically compare customs values to reference prices in their internal data. They rarely use the circumstances of sale test or the test values test.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Yes. The customs and tax authorities are a single authority and should be able to reach an agreement on methodology and price.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. The request process is the same.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and refunds: 3 years from the date of release of the imported goods. Generally, there is no penalty in cases of voluntary disclosure.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. The amount of the penalty depends on whether the adjustment was voluntarily declared by the importer or discovered by the customs authorities. If a voluntary disclosure is made, penalties may be eliminated.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A The importer should submit an application to the customs authorities for the correction of the declared customs values. If the new customs value is higher, then the customs authorities will calculate the additional customs duties owed and issue an additional assessment. If the new customs value is lower, then the customs authorities will decide whether customs duties will be refunded. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Generally, a transaction-by-transaction adjustment is required. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A The corrected customs value and the VAT taxable amount should be reported in the regular VAT return submitted for the period in which the correction took place.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A The corrected customs value and the VAT credit amount should be reported in the regular VAT return submitted for the period in which the correction took place.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Value Increase: If the adjustment results from an audit and additional VAT is owed, a penalty of 10% per annum of the additional VAT owed may apply. If a voluntary disclosure is made, penalties should be eliminated. Value decrease: No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes. However, the standard requirements of VAT legislation must be met (e.g., proving that the goods are used for the importer's economic activity).

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A No.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A Yes. If the inconsistency is not sufficiently explained, penalties may be imposed.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No. However, transfer pricing is generally subject to increased scrutiny by the tax authorities.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A Yes.

South Africa

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method. Note that South African has issue draft legislation on APAs that is pending approval. As of March 2024, the legislation has not been approved.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Generally, the customs authorities may require sales invoices, customs clearance documents, related party agreements, or annual financial statements to substantiate related party pricing. It is recommended to conduct a "test values" test to provide proof of the acceptability of the prices.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A The customs authorities prefer to use the test values method. However, the authorities will also use reference prices from their internal databases for specific industries such as the clothing and textile industries.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Generally, yes. The customs and tax authorities can agree on the methodology applied to arrive at an acceptable price, provided the values have been tested and validated, on a case-by-case basis.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. The customs authorities have published proposed new rules that would expand on the process to be followed as well as the additional information that should be included as part of the correction submission. As of March 2024, these rules have not been finalized (although expected in 2024), but, in the meantime, they provide visibility into the customs authorities' views.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. Retroactive transfer pricing adjustments that increase the price paid by the importer are under heightened scrutiny by the customs authorities. If any debit note is received, the customs authorities must be informed within one month from the date of the debit note. There is no exception to report when the duty rate is 0. Penalties and interest may apply on dutiable goods.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. If any credit note is received, the customs authorities must be informed within one month of the credit/debit note. There is no exception to report when the duty rate is 0. Penalties are unlikely in situations where there is no revenue loss.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, provided the customs authorities were informed within one month from the receipt of the credit/debit note. The request process is the same. Correction vouchers should be filed on each affected entry and a refund claim must be submitted to the customs authorities.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and refunds: Retroactive price adjustments must be reported to the customs authorities within a month of issue of the debit or credit note. The supporting detailed calculation of changes and the "vouchers of corrections" must be submitted within a reasonable period. Late notifications are subject to penalties and interest. The statute of limitations for correcting import duties is currently 2 years and for correcting import VAT is currently 5 years.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties of 25% (or higher) of the duty owed, plus interest and forfeiture, may apply. The customs authorities may waive the penalties and forfeiture if a voluntary disclosure is made, but interest would apply.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A While the customs regulations do not formally include a voluntary disclosure program, in practice, such disclosures are permitted through an informal process. A voluntary disclosure should be filed when duties are underpaid. For both underpayments and overpayments, the importer should amend each affected entry using a correction voucher. A one-time payment may be negotiated with the customs authorities. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, a transaction-by-transaction adjustment is required. However, in some circumstances, the customs authorities may allow aggregate adjustments. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. However, it can only be done by agreement with the relevant customs office.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional VAT filings are required. An adjustment to import value will automatically result in the assessment of additional VAT. Penalties and interest may apply on under-declared VAT.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional VAT filings are required and no refund or credit of import VAT would be provided. Rather, any overpaid VAT would be claimed as part of the normal VAT return process.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes. Penalties of up to 10% of the import VAT owed, plus interest, may apply. If a voluntary disclosure is made, interest would apply, but any penalties would be applied on a case-by-case basis. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. In December 2023, the tax authorities published new draft regulations that included details for successfully lodging a claim.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Generally, no. However, the customs authorities may identify such adjustments through routine risk monitoring (e.g., if an importer files a correction, in tax returns, etc.) and initiate an audit to review the rationale for the change. It is recommended that prospective price adjustments be managed by applying for a valuation determination with the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Yes. The customs authorities are increasingly initiating integrated audits that are targeting the review of import transactions from an income tax, VAT, and customs perspective. Any inconsistencies found have the potential to lead to penalties.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes. This is especially the case for industries that have been identified as high risk, such as, the clothing, textile and footwear, automotive, technology, alcoholic, petroleum, and tobacco industries.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. The customs authorities are increasingly comparing export trade data from one country with import trade data through the IT Connectivity Initiative, in which Botswana, Lesotho, Swaziland, and China also participate. Through the IT Connectivity Initiative, information shared between the customs authorities is used for risk profiling purposes by matching data via the Unique Consignment Reference.

South Korea

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Generally, the customs authorities may require a transfer pricing policy or transfer pricing study as well as audit reports or financial statements. Any agreements between the buyer and the seller would also be required. For customs purposes, it is recommended to conduct a test/analysis under the customs rules rather than a test/analysis under the tax rules.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Generally, no. When reviewing related party values, the customs authorities may employ any applicable methods, depending on the nature of the transactions, the industry of the company, and its competitors, etc. In practice, the customs authorities may apply either the circumstances of sale test and/or test values test.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. The importer may simultaneously apply for an APA and an Advance Customs Valuation Arrangement (ACVA), in which case there is an opportunity for the customs and tax authorities to consult with one another to establish an acceptable methodology for both corporate tax and customs value purposes.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. However, there is still a risk of penalties. The import reconciliation program could be utilized to report changes in certain cases in order to avoid penalties.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes. The import reconciliation program provides for reporting customs value changes in certain cases. If applicable, additional custom duties would be payable, but no penalties or interest would apply.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No, and there is no risk of penalties.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Generally, no. However, the customs authorities may allow a refund if the importer can show a pre-existing agreement for the transaction price. The import reconciliation program may be used to report changes in certain cases.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and refunds: 5 years. If additional duty payment is made within 6 months from the date of importation, the penalty is waived. For payments made within 1 year or 2 years, the penalty is reduced by 20% or 10%, respectively. In all cases, interest would apply. If the adjustment is reported in accordance with the reconciliation program, no penalties or interest would apply.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. For upward adjustments, penalties and interest are applied either if the increase in customs value is discovered during a customs audit or reported as part of a voluntary disclosure. If customs duties are owed, a penalty is imposed in the amount of 10% of the deficient duty payable, plus daily interest at the rate of 0.022%.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer may file a revised or amended declaration in the event of an increase to the reported value. A "rectification" claim for the reassessment of duties may be filed upon discovering a decrease in the reported customs value. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction adjustments are required. Aggregate adjustments may be allowed if discovered upon audit. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. A party to an ACVA or APA could utilize the import reconciliation program in order to adjust customs values as a result of retroactive transfer pricing adjustments.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional VAT filings are required. Any additional VAT owed must be paid. The customs authorities would then issue a new import VAT receipt for the VAT paid, along with the date of payment.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional VAT filings are required and any overpaid VAT is refunded. The customs authorities would then issue a new import VAT receipt for the VAT refunded, along with the date of refund.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes. Penalties and interest may apply. If a voluntary disclosure is made within 6 months of the initial declaration date, penalties may be waived, although the interest would still apply. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. Generally the additional VAT paid is recoverable. However, no recovery is possible in cases where the importer commits serious errors or violates the Customs Act in reporting customs value (e.g., repeating errors previously identified in a customs audit).

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. Generally, an adjustment over 10% in value may trigger the customs authorities' scrutiny. It is recommended that the information to support a prospective adjustment be appropriately documented and maintained.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent. Any inconsistency may draw scrutiny from the customs authorities.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No. However, it is recommended that the information to support a retroactive transfer pricing adjustment be appropriately documented and maintained.

Spain

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may request commercial invoices, contracts, and any other commercial documentation useful to supporting the actual price paid or payable for the imported goods. A test or analysis is not required. In accordance with Union Customs Code (UCC) reporting requirements, as of 18 September 2017, an importer must indicate in Box 44 of the Single Administrative Document (SAD) whether the declared customs values may be impacted by retroactive transfer pricing adjustments.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. However, the customs authorities have been known to review the average import price of similar goods.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. For transfer pricing adjustments, the customs authorities ask importers to implement the simplified declaration procedure established in Article 166 of the UCC.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. For transfer pricing adjustments, the customs authorities ask importers to implement the simplified declaration procedure established in Article 166 of the UCC.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, provided that the importer reports a provisional customs value at the time of importation or has a customs valuation agreement in place. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments and duty refunds: 3 years from the date of the taxable event.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. If the simplified declaration procedure in Article 166 of the UCC is used, no penalties or interest should apply. If the procedure is not used, penalties of 50% to 150% of the duty owed, plus interest and surcharges, may apply. If a voluntary disclosure is made, only interest and surcharges may apply.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A If Article 166 of the UCC simplified procedure is used, an adjustment can be made by filing a new import declaration. If the procedure is not used, the importer should submit a written statement to report value changes and identify the affected import declarations. The customs authorities will start a verification procedure that will end with the issuance of a payment letter that states any additional duties and VAT owed. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction adjustments are required. However, the importer may apply for a specific authorization to file an aggregated disclosure if it meets the criteria for Authorized Economic Operator Customs Simplification (AEOC). For transfer pricing adjustments, the customs authorities specifically request that importers use the simplified declaration procedure in Article 166 of the UCC.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. Subject to the customs authorities' approval, an AEOC importer may submit a temporary customs declaration indicating a provisional value at the time of import. The value may subsequently be corrected based on the retroactively adjusted price actually paid between the parties. However, the customs authorities may choose to validate the new price declared.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A If the imports are covered by the deferred import VAT regime, the increase must be self-declared in the periodic VAT return. Otherwise, no additional VAT filings are required. The customs authorities will issue a payment letter, and any additional VAT owed must be paid.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional VAT filings are required. If the importer has declared a provisional customs value at the time of import, an adjusted VAT return should be filed with the tax authorities to obtain a refund of any overpaid VAT.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: If a voluntary disclosure is filed, no VAT penalties should be imposed but surcharges and interest could apply. Penalties, surcharges and interest can be avoided by using the simplified declaration procedure included in Article 166 of the UCC. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. No set threshold exists. It is recommended that the importer obtain an advance binding ruling with the customs authorities (i.e., a Valuation Agreement) and/or use the simplified declaration procedure under Article 166 of the UCC.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Increasingly, yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. However, in practice, this is not done but formal penalties could be imposed.

Sweden

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may request documentation on sales to unrelated parties or a transfer pricing analysis. The authorities may also request documentation on the relationship between the parties, along with information on how prices are set. A test or analysis is recommended.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A Yes, but this is untested.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes. The request process is the same, provided the importer did not foresee the adjustment at the time of importation.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments and duty refunds: 3 years from the date of the original import declaration. There are no specific time limitations for reporting a change without penalty.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Penalties of 20% of the duty owed, plus interest, may apply. If a voluntary disclosure is filed, the customs authorities may grant an exemption from penalties and apply interest only.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A The importer may file new import declarations to replace the original declarations or may submit a spreadsheet containing all entry data with the adjusted values and corresponding duties, along with supporting documentation. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A Additional VAT filings must be made following receipt of the customs authorities' decision on the reported customs value increases for customs purposes.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A Generally, VAT filings will need to be amended as a result of a customs value decrease.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A A tax surcharge on any import VAT owed may be assessed.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Yes.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Generally, no. There is no process to proactively address this issue with the customs authorities.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No. However, in practice, the taxpayer's inventory basis and values reported for customs purposes should be consistent.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A Generally, no. However, the customs authorities are increasingly focused on this area.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A Yes.

Switzerland

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Generally, no evidence other than the pro forma or commercial invoice is required to support the customs value for purposes of assessing import Value Added Tax (VAT). Typically, customs duties are assessed based on weight; therefore, customs value does not impact customs duties owed. Only two values are declared at the time of import — the VAT value and the statistical value. The VAT value is based on the Cost, Insurance, and Freight (CIF) value, plus inland transport. The statistical value is based on the CIF value.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A No. For related party sales, the customs value must align with transfer pricing methods and be supported by documentation.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. The importer may submit a ruling request to the customs authorities to confirm the acceptability of the transfer pricing.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Possibly. Importers are only required to report a change in the VAT value if they cannot deduct 100% of the import VAT or if another element of value was excluded (e.g., an assist previously not declared). Otherwise, importers are not required to report a change. There is no risk of fines or penalties. Statistical values never need to be adjusted due to retroactive transfer pricing adjustments. There is no exception to report a change in the VAT value when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A No. If the VAT value or statistical value is increased, this does not typically impact customs duties owed as customs duty is typically based on weight rather than value.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. The VAT value and statistical value do not need to be changed in the event of a decrease, unless the importer cannot deduct 100% of the VAT and is seeking a VAT refund. There is no risk of fines or penalties if the decrease is not reported.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A No. If the VAT value or statistical value is decreased, this does not typically impact customs duties owed because customs duty is typically based on weight rather than value.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A N/A

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A No.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A If there is a change to the VAT value and the importer is not entitled to a 100% input VAT reduction, the change in VAT value must be reported in writing to the customs authorities within 30 days of the VAT value adjustment. If the importer is entitled to 100% input VAT reduction, then reporting is not required. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A To change the VAT values, generally transaction-by-transaction adjustments are required. However, aggregate adjustments may be accepted on a case-by-case basis. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No. However, it may be possible to file a request to obtain a "binding information" for repeated VAT value corrections.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A The customs authorities must be notified of the additional VAT owed within 30 days of the VAT value adjustment. There is no standard process for reporting the additional VAT payable. If the additional VAT payable can be deducted as input VAT, the importer may not be required to notify the customs authorities and the additional VAT may not be separately assessed.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A The importer must file an application to obtain a refund of overpaid VAT if the importer is not entitled to a 100% VAT refund. If the importer is entitled to a 100% VAT refund, the overpaid VAT can be claimed on the next VAT return.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes. Penalties and interest may apply if the adjustment is discovered upon audit and the importer is not entitled to a 100% VAT refund. If the adjustment is communicated within 30 days of the adjustment, no penalties or interest would apply. Value decrease: Possibly. Penalties may apply, but are not likely.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes, if the importer has the right to deduct VAT.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. However, it is recommended that the importer proactively contact the customs authorities to discuss transfer pricing adjustments. There is no formal process to proactively address this with the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Possibly, in particular with respect to VAT liabilities. For example, one court case decision in March 2016 resulted in over CHF 100 million additional payments due to incorrect import VAT value. Ultimately, the Swiss Supreme Court, in March 2017, ruled in favor of the importer.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No, but VAT returns must be amended.

Taiwan

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. Transfer pricing reports cannot be used as supporting documents.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A Transfer pricing reports will not be used to support customs value. The importer may present international market information to support related party prices. The customs authorities will also conduct a separate test by using the valuation methodologies outlined in the Taiwan Customs Act.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No. However, the customs authorities will assess customs value based on the World Trade Organization Valuation Agreement rules and the World Customs Organization guidance.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A No.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception to report when the duty rate is 0. However, changes in customs values due to retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by a change in price or if the timing exceeds 6 months.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes. However, retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by changes in price.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A Yes. There is no exception when the duty rate is 0. However, retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by changes in price.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Yes, if the decrease in customs value is due to an obvious error or sales returns. However, retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by changes in price.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Custom value changes due to retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by changes in price. However, if the price change is due to other reasons, such as typographical errors or sales returns, the importer has 6 months to make amendments. The importer (or customs broker on behalf of the importer) would be exempt from penalties if it voluntarily amends the import declaration form before the customs authorities start an investigation or post-clearance audit.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Customs value changes due to retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by post-importation price changes. If the post-importation price change is due to typographical errors or sales returns, and are minor in nature according to the Customs Anti-Smuggling Act, the importer's voluntary reporting before an audit could exempt the importer from any penalties. However, additional interest may still apply.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Customs value changes due to retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by post-importation price changes. If the change is due to reasons other than transfer pricing adjustments, the importer can submit a letter with supporting documents to the customs authorities for upward or downward adjustment approval. If approved, the customs authorities will issue a letter for additional duties or refunds. The disclosure process is the same.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A Customs value changes due to retroactive transfer pricing adjustments may not be accepted by the customs authorities when caused by post-importation price changes. For other value corrections, transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A An adjustment to customs value will automatically result in the assessment of additional VAT. However, the assessment period by the customs authorities is shorter than that of the tax authorities and, therefore, the importer should notify the customs authorities of any adjustments.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A If a customs value decrease is approved, the customs authorities may refund the overpaid import VAT or treat it as an input VAT credit. However, the assessment period under customs regulations is shorter than that applied by the tax authorities. Therefore, the importer should prioritize notifying the customs authorities of any adjustments.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A No.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A Generally, yes. However, to be deductible, the import VAT must not fall into any excluded conditions (e.g., it must relate to commercial purposes).

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A No.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A Yes. The import declaration form is one of the required supporting documents in recognizing the cost of imported goods under the income tax regulations.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

Thailand

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A In practice, the customs authorities may require an analysis using deductive, computed, or fallback value methods to substantiate the related party price. It is recommended to conduct a test/analysis under the customs rules to support related party prices, in addition to providing the transfer pricing analysis.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Yes. The customs authorities will first request any documentation that supports the correctness of the declared customs value (e.g., invoice, purchase order, sales agreement, payment confirmation) and will validate that the values align across the documents. In addition, the customs authorities may review any other circumstances of sale that support the arm's-length nature of the customs values, including transfer pricing documentation, regulatory developments, and economic factors. They will also consider test values.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception when the duty rate is 0. There is a risk of fines for making false declarations, however, fines are typically waived when there is no duty impact.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. However, in practice, the customs authorities may refuse to accept the adjustment reported if there is no duty impact.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, provided the importer reserved the right to obtain a duty refund at the time of importation. Generally, the request process is the same. In practice, duty refunds are difficult to obtain.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 5 years from the date of import in accordance with the statute of limitations, subject to an extension of up to 10 years on a case-by-case basis. Duty refunds: 3 years from the date of import. Importers may report changes any time before the start of a customs audit to potentially avoid fines and penalties.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties of 0.5 to 4 times the duty owed or imprisonment of up to 10 years or both, plus interest of 1% per month (capped at the duty underpayment). Goods may also be seized. Filing a voluntary disclosure before a customs audit is commenced can help to waive penalties, but interest may still apply. This will depend on the supporting documents and the discretion of the customs authorities (i.e., the Legal Division).

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Importers should submit an application reporting any changes and include an explanation for the increase or decrease with supporting documents. This can be filed at the port of entry or at the customs authorities' headquarters until 2026 when the current voluntary self-disclosure program is set to expire. (The customs authorities have consistently renewed the program upon expiration in the past). The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Transaction-by-transaction adjustments are required. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Any additional VAT owed must be paid to the customs authorities. The additional import VAT would be claimed as a credit on the monthly VAT return.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Generally, no action would be taken since the import VAT would already have been claimed as a credit in the monthly VAT return.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes, payment of the underpaid VAT plus a maximum penalty equal to the VAT shortfall and a 1.5% monthly surcharge (capped at the VAT shortfall) may apply. Penalties may be reduced if the importer makes a voluntary disclosure. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes for import VAT, but not for any applicable VAT surcharge or penalty.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A No. However, in the case of a downward adjustment, it is recommended that the importer either obtain an advance ruling, or document and maintain information and support for making a prospective adjustment.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

Turkey

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may consider industry pricing practices as well as current market conditions. Unless there is doubt as to the accuracy of the price, there is no requirement to conduct a test. However, it is recommended that importers regularly compare related and unrelated party prices and examine market conditions to validate the acceptability of related party prices.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Generally, the customs authorities use reference prices in their own database, if any, comparable values available for the same or similar goods, prices in export declarations made in the export country, price lists or letters submitted by the exporter regarding prices, or actual payments based on money transfers through banks, etc.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A No.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Possibly. The reporting requirement is unclear. However, the Exceptional Value Declaration ("EVD") methodology is available to importers to make supplementary declarations of post-importation changes. It is recommended to report adjustments to avoid potential penalties, which may be significant if discovered upon audit.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A No. The customs authorities tend to ignore decreases as it may grant an importer the right to a refund of overpaid duties. However, penalties may still be assessed for reporting an incorrect value, if discovered upon audit.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A No, unless the price change is reflected in the contract conditions for the sale of goods, the overpaid values are collected, the decrease reflects market conditions, and the importer files an EVD with the customs authorities at the time of importation. The request process is the same. In practice, however, duty refunds are difficult to obtain.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: If the EVD methodology is used, supplementary declarations should be filed by the 26th of the month after the increase is discovered (which is, in practice, the date of invoice or debit note for a retroactive transfer pricing adjustment) to avoid any penalty. However, additional duty can be paid during the 3-year statute of limitations period with penalty. Penalties can be significantly reduced by filing a voluntary disclosure. Duty refunds: 3 years if the conditions for obtaining a duty refund are met.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Penalties of up to 3 times the duty owed, plus interest, may apply. The amount of the penalty depends on whether the upward adjustment was voluntarily declared by the importer or discovered by the customs authorities.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Unless the EVD procedure is used to make supplementary declarations of post-importation changes, the reporting is subject to voluntary disclosure rules. There is no formal procedure for voluntary disclosures. In practice, the importer should submit a letter to the customs authorities advising of the increase or decrease. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A No. Transaction-by-transaction adjustments are required. The disclosure process is the same. The disclosures should clearly state the customs value and duty/tax adjustments for each import transaction.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes, the EVD procedure facilitates corrections at regular periods. However, there is no process for repeatedly correcting the same customs values. The customs authorities may charge penalties if the same customs values are corrected more than once, even if the importer follows the EVD procedure.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A No additional VAT filings are required. An adjustment to import value will automatically result in the assessment of additional VAT.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A No additional VAT filings are required. An adjustment to import value will automatically result in the assessment of additional VAT.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Penalties of up to 3 times the VAT owed, plus interest on the VAT owed. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. However, there is a time limit. The right to deduct may be used in the period when the relevant documents are recorded in the legal books, provided the calendar year following the calendar year in which the taxable event (import) occurs is not exceeded.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. No set threshold exists. However, the use of transaction value may be rejected if the price variance is significant (e.g., more than 5% to 10%, depending on the product). It is recommended that adjustments be managed to avoid a significant variance not observed in the market for such goods.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, in practice, the two values should be consistent because of the potential risk that the tax and customs authorities may exchange information and investigate the taxpayer's taxable basis and/or customs value.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. However, the customs authorities tend to reject changes in export prices after the goods are physically exported.

United Arab Emirates

1 Q **Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?**

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q **In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?**

A The customs authorities may consider transfer pricing documentation in support of the customs value stated. However, each event is considered on a case-by-case basis. No specific test/analysis is required.

3 Q **Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?**

A No. However, the customs authorities generally follow the guidelines outlined in the World Trade Organization Valuation Agreement.

4 Q **Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?**

A As of April 2024, there is no formal procedure to achieve agreement on an acceptable price between the customs and tax authorities. However, a policy is currently being prepared to allow for cooperation between the customs and tax authorities in the future.

5 Q **Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?**

A No. However, the customs authorities are currently drafting a policy addressing transfer pricing. Also, there is publicly available guidance that the tax authorities recently issued in October 2023 that addresses transfer pricing adjustments from a corporate tax perspective.

6 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. However, it is recommended to report to avoid any customs valuation issues and penalties in the event of a post-clearance audit.

7 Q **As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?**

A Yes.

8 Q **Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?**

A No. However, it is recommended that importers voluntarily report to avoid any customs valuation issues and penalties in the event of a post-clearance audit.

9 Q **As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?**

A Possibly. Importers may discuss customs duty refunds with the customs authorities on a case-by-case basis.

10 Q **In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?**

A Additional duty payments: 5 years from the date of importation for mainland entities or 10 years for Free Zone entities. Duty refunds: On a case-by-case basis.

11 Q **Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.**

A Yes. Generally, if an incorrect customs value is discovered upon audit, and the goods are subject to customs duty, then a 5% customs duty plus a 10% penalty based on the value of the goods will apply. If there are no customs duty implications, then a fine of not less than AED 500 and not exceeding AED 5,000 would apply, unless fraud is involved.

12 Q **If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A There is no formal process. However, in practice, it is recommended that the importer contact the customs authorities to understand the steps required to report customs value corrections associated with transfer pricing adjustments.

13 Q **If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?**

A There is no formal process. In practice, the customs authorities would expect the importer to correct customs values on a transaction-by-transaction basis.

14 Q **Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?**

A No. However, a new policy addressing transfer pricing is currently being drafted by the customs authorities and may allow for the facilitation of repeated value corrections.

15 Q **If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?**

A Pursuant to the VAT Law implemented in 2018, importers should voluntarily inform the tax authorities of the change.

16 Q **If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?**

A Pursuant to the VAT Law implemented in 2018, importers should voluntarily inform the tax authorities of the change. A tax refund request may be submitted to the tax authorities. There is no specific timeframe for response. The response time can vary depending on the nature of the inquiry or request, the complexity of the matter, and the workload of the tax authorities.

17 Q **Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?**

A Yes. Federal Law No. 7 of 2017 on Tax Procedures and the corresponding Executive Regulations allow for VAT-specific tax assessments, and penalties for administrative errors and tax evasion. Penalties for declaring incorrect values shall be not less than 500 AED and shall not exceed 3 times the amount of the total VAT assessed. VAT-registered importers may make use of the reverse charge mechanism. The risk of penalties for such amendments is, in practice, generally only material for importers who are not fully entitled to recover the import VAT incurred.

18 Q **If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).**

A No. The VAT Laws do not address the treatment of additional VAT paid due to an increase in customs value resulting from transfer pricing adjustments.

19 Q **Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?**

A Yes. No set threshold exists. If the importer can support the change in price, the risk is low.

20 Q **Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?**

A No.

21 Q **Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?**

A No.

22 Q **For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?**

A No.

United Kingdom

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The customs authorities may request a copy of the related party sales contract and the findings from any transfer pricing analysis as well circumstances surrounding the sale. A test/analysis to support the related party price is recommended.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A The customs authorities require that an importer be able to apply "tests" for comparison purposes. The "test values test" is considered most robust, under which an importer must provide test values that can be used to compare a related party transaction to transactions with unrelated parties. If there are no unrelated party sales, then transfer pricing documentation, will be required.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A HM Revenue & Customs is responsible for both tax and customs duty matters. While the authorities operate independently, there are signs of increasing cooperation particularly for transactions involving large businesses which brings all tax reporting under the control of one Tax Officer. Consequently, and, in view of Base Erosion Profit Shifting (BEPS) rules, increased future cooperation is anticipated.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. A November 2022 guidance states that businesses should avoid using a margin-based transfer price because year-end transfer pricing adjustments result in the price declared at the time of import that cannot be considered final. In practice, the customs authorities are actively challenging businesses to find alternate valuation methodologies. If an importer intends on a margin-based approach, it is recommended that they proactively approach the customs authorities to seek agreement on their proposed methodology for calculating the initial price and applying any subsequent adjustment.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0. However, any adjustments could be challenged by the customs authorities as to whether the use of Method 1, transaction value, remains the correct method of valuation.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes, subject to customs approval that the importer may use a customs value based on transfer prices that are subject to adjustments.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. However, in practice, duty refunds may be difficult to obtain. If the importer has an agreement with the seller that contemplates potential retroactive transfer pricing adjustments, this should be proactively discussed with the customs authorities in advance of the import. The request process is the same.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 3 years from the date on which the debt was incurred. There is no time limitation in cases of fraud. Duty refunds: 3 years from entry acceptance. However, the customs authorities will still need to approve the refund, which is easier to obtain if there is an advance agreement. There are no specific time limitations for reporting a change without penalty. However, disclosures should be made at the earliest opportunity.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Interest may apply. In practice, interest is not typically charged on the amount owed, but may be due if the customs authorities demand underpaid duties/taxes and the payment is late. Penalties may apply in cases of serious infringements, fraud, or negligence. In practice, this may include cases in which the customs authorities discover a transfer pricing adjustment that was not voluntarily disclosed by the importer.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The importer should contact the customs authorities on how to proceed. In cases of underpayment, the customs authorities may typically issue a post-clearance demand notice. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Typically, a transaction-by-transaction breakdown is required. Aggregate adjustments may be permitted with an advance agreement from the customs authorities. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Once the authorities are notified of the adjustment, a demand notice for VAT will be issued by the authorities.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Adjustments should be made on the VAT return, according to the VAT rules.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase and decrease: Generally, no. There is a separate penalty regime for VAT, but additional penalties would rarely apply.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Possibly. To do so, the business must have used "Postponed VAT" accounting at the time of customs clearance. If VAT was paid using a deferment facility, then this payment will need to flow through that facility prior to deduction.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. No set threshold exists. A price change may trigger an audit if it is significant and results in a price decrease. In this regard, what is deemed "significant" by the customs authorities will vary by case. It is recommended that the importer verify that the transfer pricing is acceptable for customs value purposes and explain the prospective adjustment to the customs authorities.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Yes. Consistency would be expected as both regulations essentially require that the price be at arm's length. The potential risk would be that if the cost of goods sold were too high, taxable profits may be reduced. Penalties of up to 100% may be applied, but they may be mitigated through voluntary disclosure and cooperation with the corporate tax authorities.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes, particularly after the customs authorities published the latest valuation guidance in November 2022.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A No.

United States

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful. Bilateral APAs have been viewed as more persuasive than the alternatives.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A The "circumstances of sale" test is more commonly applied than the "test values" test. The customs authorities will consider the totality of evidence available under the "circumstances of sale" test. This may include financial data, data from transfer pricing documents and/or APAs, intercompany supply agreements, customs related party value studies, product- specific profitability analyses, objective industry studies that evidence pricing practices of the industry, data on unrelated party sales, and any other evidence that supports the arm's length nature of the prices under the customs rules. It is recommended that importers proactively conduct a customs analysis in addition to any transfer pricing analysis completed for tax purposes.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Yes. The customs authorities will typically apply the methods under the circumstances of sales test. The "all costs plus profit" analysis is considered most objective and persuasive. However, other more subjective methods and the totality of facts and circumstances will be considered in making a determination. The test values test is rarely applied.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A Yes. If an APA is sought with the involvement of the customs authorities, it may be possible to obtain the customs authorities' alignment on the methodology used and accepted by the tax authorities.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. There is an Informed Compliance Publication entitled, "Determining the Acceptability of Transaction Value for Related Party Transactions." In addition, numerous customs rulings and case law address valuation for related party import transactions. A landmark customs ruling issued in May 2012 (HQ W548314) outlines the requirements for an objective formula and the application of a five factor test when retroactive transfer pricing adjustments occur. There are many rulings that followed HQ W548314 that apply the new requirements.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Generally, yes, with very limited exceptions. There is no exception to report when the duty rate is 0.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Generally, yes, unless the adjustment was unforeseeable.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Generally, yes, with very limited exceptions. There is no exception to report when the duty rate is 0.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes, but only for a limited period, i.e., prior to "liquidation" (which is typically about 314 days from the date of entry) or within the 21-month Reconciliation Program period, if applicable. The customs authorities strongly encourage that custom value changes due to transfer pricing adjustments be reported through the Reconciliation Program, especially if the importer seeks to obtain refunds on downward adjustments to customs values.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Additional duty payments: 5 years from the date of entry. Duty refunds: Generally, to report changes without a penalty, the importer must submit the claim prior to "liquidation" or within 21 months from the date of entry through the Reconciliation Program. However, interest will apply.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. If the importer did not act with "reasonable care," the minimum penalty for negligence would be 2 times the duty owed if the goods were dutiable, or 20% of the import value if the goods were not dutiable. Penalties are much greater for gross negligence and fraud. If a prior disclosure is made, only interest may apply. No penalties would apply if the adjustments are made through the Reconciliation Program.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A The Reconciliation Program is the preferred method for reporting retroactive transfer pricing adjustments. Under the Reconciliation Program, values must be adjusted and reported via reconciliation entries filed within 21 months of entry. Outside the Reconciliation Program and prior to "liquidation" of the entry, the importer should file a Post Entry Amendment/Post Summary Correction. If the entry has already "liquidated," the importer should file a protest or prior disclosure. The disclosure process is the same.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A Generally, transaction-by-transaction, with limited exceptions. The disclosure process is the same.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A Yes. The Reconciliation Program allows the importer to flag entries for value at the time of import and then reconcile the originally declared value to a final value within 21 months of entry.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A N/A

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A N/A

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A N/A

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A N/A

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Possibly. Related party import transactions continue to be a very high focus area. If the value reported significantly differs from prior reported values, it may trigger scrutiny by the customs authorities. It is recommended that the information and support for making a prospective adjustment be properly documented and maintained, and that the importer be prepared to answer any questions regarding prospective transfer pricing adjustments.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A Yes. The potential risk is the denial of the corporate tax deduction.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes. According to regulation, declared export values must be restated if the value declared changes. If a transfer pricing adjustment increases the value of a specific Schedule B or Harmonized Tariff Schedule classification above USD 2,500, an export declaration for the shipment must be filed if one was not filed previously. In practice, export values are not commonly restated.

Vietnam

1 Q Is a transfer pricing study or an Advance Pricing Agreement (APA) alone viewed by the customs authorities as sufficient to support the use of the transaction value method of customs valuation?

A No. However, transfer pricing studies and APAs may contain information that is useful for supporting the transaction value method. Note: While APAs are now available in Vietnam, they have yet to be widely obtained.

2 Q In practice, what evidence do the customs authorities require to substantiate that the related party price is acceptable from a customs perspective? Is it recommended to conduct a test and/or analysis under the customs rules to substantiate the arm's length nature of the related party price under the customs rules (which would be a separate test/analysis from the transfer pricing analysis)?

A Generally, the customs authorities require evidence of how the prices between the related buyer and seller were determined, and that the negotiations were conducted as though the parties were unrelated. The customs authorities may also request evidence of payments by the buyer (e.g., bank remittances) and test the import price against the prices of identical or similar goods in their customs databases. Tests or evaluations by independent third parties are not currently accepted.

3 Q Is there a specific method that the customs authorities prefer to use when testing whether a related party customs value is arm's length (e.g., the circumstances of sale test, test values test, comparison to reference prices in the customs authorities' own data, other methods, etc.)?

A Yes. In initial testing, the customs authorities will reference declared values in their own databases, transfer price dossiers, customs documentation, and information provided by the importer. If the customs authorities continue to have doubts, the test values method may be used to demonstrate values are acceptable.

4 Q Is it possible to get the customs and tax authorities to both agree on the methodologies to arrive at an acceptable price (i.e., the price paid or payable, exclusive of freight, insurance, and other additions to the price) for corporate tax and customs duties purposes?

A No. However, the customs and tax authorities continue to work on a framework for this purpose.

5 Q Is there any publicly available guidance from the customs authorities (i.e., not the basic rules, but an elaboration on the rules) on the treatment of related party prices and/or prospective/retroactive transfer pricing adjustments from a customs perspective?

A Yes. The regulations stipulate basic conditions to use the transaction value method based on transfer prices. However, there is no guidance on handling retroactive transfer pricing adjustments.

6 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that increases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is zero. However, the customs authorities will typically decide whether to accept disclosures on a case-by-case basis. If the authorities identify a higher price paid versus declared customs values during a customs audit, administrative penalties may apply. Any additional duties owed would be collected, and penalties imposed.

7 Q As applicable, if an increase to the customs value is reported, are additional customs duties and related taxes/fees due?

A Yes. Penalties and late payment interest will also apply.

8 Q Are importers required to report to the customs authorities a post-importation change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment) that decreases the price paid by the importer? If yes, is there an exception to report when the duty rate is zero? If no, is there still a risk of fines or penalties?

A Yes. There is no exception to report when the duty rate is zero. The customs authorities will typically decide whether to accept a disclosure on a case-by-case basis. If the disclosure is accepted, the importer is typically subject to administrative penalties, even when no duties are owed.

9 Q As applicable, if a change in the reported customs value decreases the customs value, are duty refunds available? If yes, is the process for requesting the duty refunds the same if the change is the result of a retroactive transfer pricing adjustment?

A Yes. However, duty refunds arising from retroactive transfer price adjustments will be subject to close scrutiny. In practice, refunds are difficult to claim.

10 Q In the event of a change to the reported customs value resulting from a retroactive transfer pricing adjustment, what are the time limitations for making additional duty payments and/or requesting duty refunds? Are there specific time limitations for reporting a change without penalty?

A Duty payments: No specific time limit. Duty refunds: 10 years from the date of duty payment on the original customs declaration. Note: Adjustments may be made within 60 days of the original customs declaration date without penalty.

11 Q Are there any customs-related fines, penalties, or interest that could result from a change to customs value due to a retroactive transfer pricing adjustment? If yes, provide a brief description of the applicable fines, penalties, or interest.

A Yes. Border tax owed: A penalty of 10% or 20% of the additional amount owed, or up to a maximum of 3 times the amount due plus interest. Administrative penalties may also apply. No border tax owed: Administrative penalties. Penalties apply for both imports and exports. The importer's customs compliance rating may also be downgraded which will impact clearance processing and times.

12 Q If available, what is the procedure for reporting to the customs authorities a change in the reported customs value (e.g., due to a retroactive transfer pricing adjustment or any other value correction)? Provide a brief description for reporting a change that results in: (1) an increase and (2) a decrease to the reported customs value. Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A There is no regulated procedure. However, it is possible to file voluntary disclosures to amend previous customs declarations. The customs authorities will review and accept disclosures on a case-by-case basis.

13 Q If available, can customs-related disclosures of customs value changes (e.g., due to retroactive transfer pricing adjustments or any other value correction) be made in the aggregate, or is a transaction-by-transaction adjustment required? Is the disclosure process different from other value-related corrections if the change is the result of a retroactive transfer pricing adjustment?

A No mechanism exists to file aggregate adjustments. Corrections, where applicable, must be made on a transaction-by-transaction basis.

14 Q Do any customs programs currently exist to facilitate repeated value corrections (e.g., due to annual or quarterly retroactive transfer pricing adjustments)?

A No.

15 Q If customs value increases are reported to the customs authorities, what actions must also be taken with respect to import Value Added Tax (VAT) and equivalents?

A Once any import value increases are approved by the customs authorities, additional VAT and other border taxes (where applicable) will automatically be assessed.

16 Q If customs value decreases are reported to the customs authorities, what actions must also be taken with respect to import VAT or equivalents?

A Once the customs authorities approve any import value decreases, VAT and other border taxes (where applicable) will automatically be adjusted. While it is possible to claim refunds of overpaid duties, VAT and other taxes, such claims will be subject to detailed scrutiny.

17 Q Other than the customs-related fines, penalties, and interest described in Question 11, are there any VAT-only fines, penalties, or interest that could apply when making a VAT-related adjustment due to a customs value increase or decrease?

A Value increase: Yes. Additional VAT, penalties, and interest may apply in combination as follows: 0.03% interest per day on the additional VAT owed, 10% or 20% of the VAT owed, or a maximum penalty of 3 times the VAT owed. Value decrease: No.

18 Q If customs value increases reported to customs authorities result in a requirement to pay additional duties and VAT, can the additional VAT that is payable be treated as input VAT and deducted against the value of output VAT due on the VAT return? (i.e., so that the VAT taxpayer only experiences a cash flow impact rather than an additional cost).

A Yes. Generally, the additional VAT paid is deductible.

19 Q Do prospective transfer pricing adjustments that result in different customs values typically invite scrutiny by the customs authorities? If yes, is there a set percentage threshold which would automatically trigger such scrutiny? If either yes or no, is there a formal process, requirement, or recommended approach to managing prospective transfer price adjustments prior to importing at new prices?

A Yes. No published threshold exists however, the customs authorities monitor benchmark values. A price decrease below benchmarks would typically trigger scrutiny. A price increase that is significantly higher than historic values declared, (particularly if higher than benchmarks) would also trigger scrutiny. It is recommended the importer carefully considers how the prospective adjustments are to be made, and to have a documented rationale to support the adjustments.

20 Q Do the income tax laws or practices in your country require (for corporate income tax purposes) consistency between a taxpayer's inventory basis (cost of goods sold) and values reported for customs purposes? If such amounts are not consistent, what are the potential risks?

A No. However, the tax authorities have been observed to check Cost of Goods Sold (COGS) against declared customs values and to require taxpayers to explain any significant differences. If COGS are found to be overstated, then additional corporate taxes could be imposed. Note: Where declared import prices are substantially higher than the benchmark values in customs databases, there is a mechanism to notify the tax authorities to investigate.

21 Q Is the acceptability of related party prices as the basis for determining customs value a high-focus enforcement area for the customs authorities in your country?

A Yes.

22 Q For exported goods, must declared export values in the country of export be restated as a result of the application of retroactive transfer pricing adjustments?

A Yes, because the valuation rules apply to exports as well as imports. Also, the customs authorities make decisions to accept disclosures on a case-by-case basis. If a higher price paid versus the export value declared is identified during a customs audit, administrative penalties may apply even if the duty rate is 0. Any additional export duties would be due and further penalties may be imposed.



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