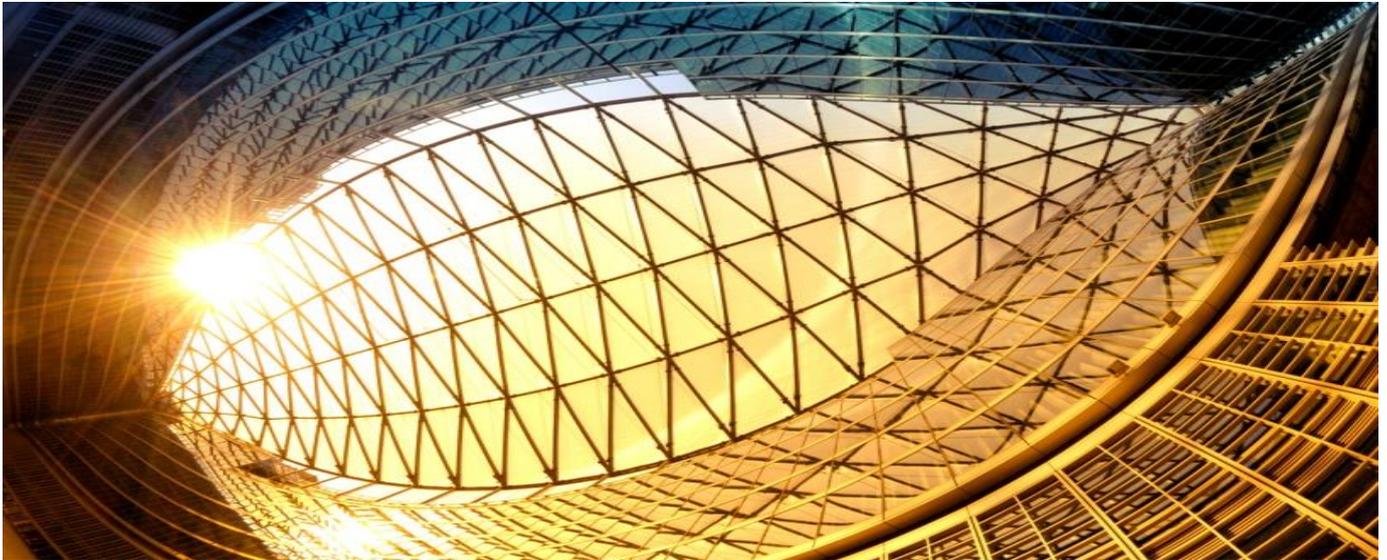


23 February 2015

Transfer pricing and customs valuation team up



Offices

Milan

Via Vittor Pisani 27, 20124
T: +39 02 676441 - F: +39 02 67644758

Ancona

Via I° Maggio 150/a, 60131
T: +39 071 2916378 - F: +39 071 2916221

Bologna

Via Andrea Costa 160, 40134
T: +39 051 4392711 - F: +39 051 4392799

Florence

Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961 - F: +39 055 2619666

Genoa

P.zza della Vittoria 15/12, 16121
T: +39 010 5702225 - F: +39 010 584670

Naples

Via F. Caracciolo 17, 80122
T: +39 081 662617 - F: +39 081 2488373

Padua

Piazza Salvemini 2, 35131
T: +39 049 8239611 - F: +39 049 8239666

Perugia

Via Campo di Marte 19, 06124
T: +39 075 5734518 - F: +39 075 5723783

Pescara

P.zza Duca D'Aosta 34, 65121
T: +39 085 4210479 - F: +39 085 4220295

Rome

Piazza delle Muse 8, 00197
T: +39 06 809631 - F: +39 06 8077459

Turin

C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166 - F: +39 011 8395865

Verona

Via Leone Pancaldo 68, 37138
T: +39 045 8114111 - F: +39 045 8114390

By the end of this month, the Italian Revenue and Customs Agencies are expected to issue a joint statement of practice addressing the issue of reconciling declared customs values with adjustments based on a transfer pricing (TP) policy.

The purpose of this groundbreaking statement of practice is to compare the impacts of TP and customs valuation methods. In Italy, the Revenue and Customs Agencies have always adopted different approaches to the issue. From a customs perspective, TP adjustments are made retrospectively after the importation of goods, because they are usually based on the actual results of a group, which are available only after the end of a fiscal year. Despite the WCO's guidance (Commentary 23.1, November 2010), local customs offices have not yet formally recognized TP policies and documentation when determining the value of imported goods. This approach was upheld by the Italian Supreme Court's recent decision which stated that, under certain circumstances, a TP policy cannot be used for customs valuation purposes. Furthermore, European customs law has done nothing to explain how to deal with TP adjustments after importation.

However, due to the increase in cross-border transactions, the connection between TP policies and customs valuation is clearer than ever – they are two sides of the same coin.

After our advocacy for change (at public seminars held since 2013 at the International Fiscal Association), the Revenue and Customs Agencies decided to team up to solve these issues and clarify, for the first time, how to handle price adjustments from a customs perspective.

The statement of practice, drafted by a working group staffed by officers from the Revenue and Customs Agencies, will indicate two ways of dealing with TP adjustments: a) the method indicated in article 156a of Commission Regulation (EEC) No 2454/93, or b) the incomplete declaration method indicated in article 254 of that same regulation.

The first solution will allow the customs values of goods to be conclusively determined, subject to an agreement between the importer and the Customs Agency. As an exception to article 32 of Commission Regulation (EEC) No 2913/92, the Customs Agency will authorize the importer to declare customs values based on specific criteria, as certain additions are not quantifiable at the time of customs declaration.

The second solution will allow the importer, subject to authorization from the Customs Agency, to declare a provisional value when importing goods. Afterwards, a definitive value will be set, allowing the authorities to check the customs duties.

When all this goes ahead, it will finally be possible for TP and customs valuation in Italy to work side by side. Provided, naturally, that advance agreements with local customs authorities allow companies to reconcile any future TP adjustments.

Contact us

Studio Associato - Consulenza legale e tributaria

Massimo Fabio

KPMG, Tax & Legal

T: +39 06 8096 3519

E: mfabio@kpmg.it

Gianni De Robertis

KPMG, Tax & Legal

T: +39 06 8096 3594

E: gianniderobertis@kpmg.it

kpmg.com/it

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