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CUSTOMS VALUATION, TRANSFER PRICING, AND ACCOUNTANTS

by
Sheldon Mak Rose & Anderson

1. **Problem** Regular audits of importers' books for IRS purposes fail to consider disparities in transfer pricing for Customs purposes and thereby open clients to penalty exposure.

Accounting firms typically will audit a client to assure that its books are in order for purposes of public disclosure, and IRS scrutiny, as necessary. Companies tend to exaggerate cost of goods sold in order to reduce overall profits, and thereby tax exposure. When these firms import, they frequently try to minimize this cost in order to reduce Customs duty exposure. When there is a difference in costing figures, penalty exposure can arise from either or both Customs and the IRS. For, these agencies now talk to each other regarding such questions to assure consistency in fulfillment of this dual reporting requirement.

The auditing arm of accounting firms almost invariably asks no questions about Customs valuation. The client therefore has no way to anticipate that it has a problem, and therefore, can only react to government discovery thereof after the fact. This generally means that penalties will be assessed.

2. **Solution**

Where accounting firms work with Customs counsel during audits, the aforementioned problems can be detected early on. For, Customs counsel can arrange a checklist of questions that the auditors can ask when going through import company books. Thereafter, the results can be passed on to Customs counsel for analysis. If any problems arise, they can then be discussed with the client(s). This allows (1) problems to be corrected prospectively, and (2) voluntary disclosure, and tender of lost revenue as necessary, made to Customs in order to prevent penalty exposure.

Customs counsel's questionnaire raises the very same concerns that the government is likely to key on so that auditors need little or no experience with Customs to make the necessary inquiries. Obviously, practice does foster sophistication. Ultimately, auditors working with such questionnaires will be able to extract complete responses. This will, of course, enhance the quality of the investigatory success of the audit, thereby better protecting the client(s). Further, a better protected client will be a happier client! And, because such services are not widespread, importers will be more and more attracted to accounting firms offering them. Advertising in international trade publications should greatly enhance business expansion with existing and new clients of this type.

3. **Advantage of Collaboration With Sheldon & Mak** With Senior International Trade attorney, Steven Lehat, Sheldon & Mak possesses a dozen years of International Trade law experience. Further, Sheldon & Mak makes use of non-attorneys with expertise in this area of the law in endeavoring to both lower legal costs and deliver services with those who are well connected with Customs operations. And, collaboration with Sheldon & Mak assures your clients that their needs can be handled by a familiar face, yours! This helps retain and expand business opportunities in the international trade law area.

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