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TaxNewsFlash

Canada

Importers — Value for Duty Changes on the Horizon

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Canadian and non-resident importers may soon face higher customs duties as a result of new changes that affect duty valuation. The Canada Border Services Agency (CBSA) recently released amendments to the Valuation for Duty Regulations (VFD Regulations) that are intended to ensure that, where an importer "arranges" to resell goods to a Canadian customer prior to importing the goods into Canada, the value for duty of the goods is based on the selling price to the Canadian customer. These changes, which are not yet in force, are intended to address a perceived regulatory gap that, in the CBSA's view, benefits non-resident businesses by allowing them to pay less customs duty than Canadian resident importers. The CBSA published these changes on May 27, 2023, and is accepting comments until June 26, 2023.

If these regulatory changes are implemented as currently drafted, they could significantly impact a wide range of businesses, including both Canadian and non-resident importers. As a result, importers should review the expanded definitions and assess how these changes may affect their existing sales structures and supply chain management, and adjust for potential increases in duties. It is important for importers to carefully consider the impact of these changes on prospective importations, since the CBSA will continue to conduct post-importation verifications to enforce compliance.

Background
The primary method of customs valuation in Canada is the Transaction Value Method, wherein the value for duty is based on the price paid or payable for goods "sold for export" to Canada to a Purchaser in Canada (PIC). The current VFD Regulations generally define a PIC as a Canadian resident, a person who is not a resident but who has a permanent establishment in Canada or, alternatively, a person who has not

entered into an agreement to sell the goods to a resident before the goods are purchased for import into Canada. The term "sale for export" is not defined in the Customs Act or VFD Regulations. However, based on jurisprudence of the Supreme Court of Canada, the sale for export is the sale by which title to the goods passes to the importer.

Based on the wording of the current regulations and relevant case law, if a series of transactions occurs that results in the importation of goods into Canada, the value for duty may be based on a sale that occurs prior to the last sale to a customer in Canada. Under the proposed amendments, the CBSA would in all cases look to the last sale to establish the value for duty unless the goods are imported based solely on the speculation of sales in Canada without any prior agreement, understanding or arrangement to sell the goods in Canada.

Proposed value for duty changes

The proposed regulatory changes introduce new definitions and amend other definitions intended to ensure that the last sale to the buyer in the country of import is used as the basis for determining value for duty. Note that although the government has not yet indicated when these changes will come into effect, they would likely come into force in alignment with other amendments included in the Budget Implementation Act, 2021.

Sold for export to Canada

The proposals introduce a new definition in respect of the term "sold for export to Canada", which captures not only legal sales and agreements to sell, but also "understandings" and "arrangements" for the transfer of goods in exchange for payment, regardless of whether transfer of ownership is completed prior to the importation of the goods into Canada. If goods are subject to more than one sale, the value for duty will be based on the last sale in the supply chain regardless of the chronological order of the sales.

Purchaser in Canada

Additionally, the proposals significantly change the current definition of "purchaser in Canada" which, if implemented, will simply mean the person who purchases or will purchase the goods sold for export to Canada. This term will no longer be linked to terms "resident" or "permanent establishment".

We can help

KPMG's Trade & Customs team are well-positioned to help you analyze the impact of trade-related measures and strategize the most effective ways to minimize the impact on your business. For details, contact a KPMG's Trade & Customs professional in Canada:

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