KPMG 安侯建業

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Taiwan Customs Requirements when Making One-Time TP Adjustments

In November 2019, Taiwan Ministry of Finance (MOF) issued Tax Ruling No. 10804629000 (the "TPA Ruling") that opens a door for the companies who conduct controlled transactions in Taiwan to make one-time TP adjustments prior to closing the accounts of the fiscal year. Read our e-Tax alert issue 139 for an introduction of the TPA Ruling.

Since the TPA Ruling includes Customs compliance requirements for imported goods, Taiwan Customs released the "Guidelines on assessing one-time TP adjustment to determine the dutiable value" (the "Guidelines"), which clarifies the customs requirements for taxpayer who would like to make TP adjustment on the imported goods.

Taiwan Customs Bureau also summarized some frequently asked questions on how to comply with the customs requirements in assisting companies in adopting the TPA ruling.

Based on the above KPMG briefly summarized the required customs procedures for making one-time TP adjustment as below:

Upon Importation During Fiscal Year

- Identify the imported goods which may be subject to one-time TP adjustment and the relevant import declaration forms.
- The following items must be specified on the identified import declaration forms:
  1. Fill in code "138" in the special relationship column (26) indicates that special relationship has taken place, and would be subject to one-time TP adjustment.
  2. Fill in code "65" in the tax payment column (45) indicates the importation is provisional dutiable tax.
  3. Specify in other declaration matters column (52), "The importation is under one-time TP adjustments for XXX fiscal year for the period between year/month/date ~ year/month/date".
- Please be reminded that if importers do not fill the codes or marked the notation required above-mentioned on the import declaration, such import declaration forms will be treated as a general importation. Thus, the importers will not be able to make the retroactive TP adjustment on the customs price of those forms after year-end.
- Along with the above import declaration forms, at importation, companies should provide the following document:
  - Form "Application for Goods Released under Deposit";
  - Proforma invoices; and
  - Value declaration form.

Apply with Customs Authorities Within 1 Month After Year-end

Within 1 month after the end of the fiscal year, if the TP adjustment is actually incurred, the importers should submit the one-time TP adjustment application form with Taiwan Customs. For the application, the following documents need to be provided:

1. Application Form containing the information on the import declaration form number, item number, goods description, quantity, unit, provisional prices, the price per official commercial invoices, and reasons or methodologies for determining the transaction price;
2. Transaction Agreement;
3. Official commercial invoices for the specific importation subject to TP adjustment;
4. Relevant payment slips; and
5. Other relevant documents as required by Customs.

FAQs on The Required Customs Procedures

1	**Can the company make the TP adjustment to imported goods on a lump sum basis?**	No. As the Customs need to examine which item will be subject to TP adjustment and whether the prices after adjustments are in compliance with Customs Act., instead of calming a lump-sum amount, importers must apply for adjustment on an item-by-item basis.
2	**If importers do not mark the required codes and notation on the import declaration forms upon importation, could the importers add the codes and note to the forms afterwards?**	No. If the importers do not mark the required items at the time of importation, the import declaration forms would then be inapplicable to make TP adjustment.
3	**Is it required to apply for adjustment at year-end on every import declaration form marked for one-time TP adjustment?**	No. It is allowed to select specific import declarant forms and items from all forms marked for one-time TP adjustment to adjust their prices based on the company's actual situation.
4	**If importers do not apply for adjustment with the Customs at year-end or only selects a few forms to be adjusted, how the customs would proceed with those import declaration forms marked for one-time TP adjustment but not apply for adjustment?**	For the import declaration forms marked for one-time TP adjustment but not apply for adjustment in the year-end, the Customs will assess their customs values based on the prices originally declared according to the Customs Act.
5	**Are there required formats for proforma invoice and official commercial invoice?**	No. There is no specific format of proforma invoice and official commercial official invoice required by the Customs. The companies could produce those invoices based on their business practices.
6	**Must the customs clearance procedure for import declaration form marked for one-time TP adjustment be either C2 (Document Review) or C3 (Cargo Examination)?**	Yes. Once an import declaration is marked for one-time TP adjustment, the clearance method is defaulted to be either C2 or C3, which usually takes longer time to process than under C1 mode (Exempt from Inspection).
7	**Is TP report could be used as a basis for Customs to value the after-adjusted price?**	The TP report could be submitted with the application form to the Customs at year-end for reference purpose; however, the Customs will still appraise the after-adjusted prices based on the customs valuation methods stipulated in Customs Act.
8	**Whether the deducibility of TP adjustment on the income tax return is assessed by the Customs?**	No. The Customs 'assessment will only focus on whether the adjusted prices are reasonable based on the valuation methods under the Customs Act. The deducibility of TP adjustment on the income tax return should still be scrutinized by the tax authority.

KPMG Observations

The TPA Ruling offers an opportunity for MNEs to make the post-importation adjustment on the price of imported goods in Taiwan. However, whether companies can claim such TP adjustment for income tax purpose will also rely on whether customer procedures are met.

From practice KPMG observed that the required customs procedures under the Guidelines may differ from the procedure that the companies currently follow, it may require additional administration efforts, costs, and coordination among different parties for the companies to change the current practice in order to comply with the requirements.

If it is found that there is a possibility that the Taiwanese company may need to make one-time TP adjustments on purchase of goods from offshore related parties, the company should evaluate the actions and parties/departments need to be involved to obtain the required document, potential impact and obstacles to the logistic and business operation while applying the required customs procedures.

As Customs authorities reminded, companies cannot dump the amount TP adjustment to just one or few transactions as it could abnormally distorted the import values. KPMG suggest companies do not wait until last month but should take actions earlier to secure a position to claim the TP adjustment for income tax purpose.

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