Abolishment of the first sale rule under the UCC

The Union Customs Code at a glance

The new regulations according to the Union Customs Code (UCC) contain among others the omission of the first sale rule when importing goods into the European Union.

What is changing?

The current Customs Code includes the rule that in use of the “transaction value method” the customs value of imported goods is generally to be calculated based on the purchase price out of the underlying cross-border transaction (“sale for export purposes into the Union”).

Under certain conditions, however, it was possible to determine the customs value based on a price for the transaction previous to the actual “sale for export”. This exception enabled that for instance the margin charged by a third-country-company was not subject to import duties and taxes when importing the goods into the European Union.

In practice, numerous companies were able to make significant cost savings due to the concept of first sale. The UCC and its implementing rules do no longer contain such an exception. In the future, the import duties and taxes will be calculated in use of the “transaction based method” based on the “last sale for export” into the European Union.

However, the implementing rules contain a transitional arrangement. This arrangement allows - under very strict conditions - the concept of first sale and therefore the declaration of first sale prices up to the 31. December 2017.

The Union Customs Code

The UCC entails a number of new regulations in the field of customs law, which are intended to simplify, streamline and expedite customs processes. However, they are rather complex and the required implementation measures are hardly manageable for the parties involved. The new regulations will be effective 1 May 2016.

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Who is affected?

The omission of this exception has an impact on all companies that made use of the first sale rule. Those companies get charged with higher import duties and taxes.

What to do?

There is an immediate need for action for the affected companies:

► Identification of import operations that have been declared by using the concept of first sale
► Determination of any additional costs
► Consideration of the additional costs with respect to acquisition costs
► Discussion of possible alternative business models (e.g. change from a „Buy-Sell“ structure to a commissioners structure)
► If possible, check whether the transitional arrangement can be applied