License fees and customs valuation: Amendments under the UCC

The Union Customs Code at a glance

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.

What is changing?

Under the current law, there is a distinction between license fees for trademarked symbols and license fees for other property rights with regard to the consideration in the customs value of imported goods (article 29 and 32 of the Customs Code). The UCC does no longer contain such a distinction. The application field of adding license fees to the customs value will therefore be broadly extended.

Furthermore, there will be a content-related amendment of the „terms of a transaction“ under the UCC and its implementing rules. This amendment is of importance for all parties involved.

Under the current Customs Code, the addition of paid license fees is usually not required if the payment is made to a third party instead of the seller or a person associated with him. The UCC does presumably no longer contain such an exception.

The new regulations lead to an obligation of adding such license fees to the customs value of imported goods for a growing number of cases. Therefore, the import duties and taxes will be increased.

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Who is affected?

The new regulations generally have an impact on all companies that import goods from third countries into the European Union and - in this context - pay license fees.

Under the current Customs Code, the addition of paid license fees is not required if the third-country-seller and the licensor are neither identic nor associated. Those constellations are therefore affected the most under the UCC.

What to do?

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

► Relevance-check of license fee payments under the UCC in connection with the importation of goods from a customs point-of-view
► Determination of any additional costs
► Consideration of the additional costs with respect to acquisition costs
► Discussion of possible alternative business models including a taxation point-of-view (e.g. "BEPS")