

Indirect tax alert



Significant changes to the Customs Tariff Law effective 1 April 2013

On 29 March, the Japan Diet passed a law to modify the Customs Tariff Law ("the Law"). The Law, which was changed for the first time in 32 years, entered into force on 1 April 2013.

The majority of the changes concern rules for determining the customs value (i.e., the tax basis for customs duty) of imported merchandise, and are intended to modernize certain provisions of the Law to better apply to today's global and multi-tiered supply chains.

While the changes to the Law provide clarification on the determination of customs values, it could potentially have negative implications on non-resident importers. This alert discusses the exclusion of non-resident purchase price as a customs value in the transaction value method and new evidentiary requirements.

1. Exclusion of non-resident purchase price as a customs value under the transaction value method

One of the most significant changes is to Article 4, which defines transaction value. Transaction value is the principal method of determining customs value and is generally the invoice price plus additions for international freight, insurance, certain royalty payments, etc.

The new Article 4 specifically excludes from transaction value, transactions where the buyer does not have a place of business in Japan. Going forward, a non-resident entity's purchase price will not be accepted as a customs value under the transaction value method, and non-resident importers will be required to calculate the customs value of imported merchandise using alternative methods of customs valuation. Additionally, the Basic Circular to this Article suggests that even in instances where a foreign buyer has a place of business in Japan (such as a branch or a rep office), the use of the transaction value may be limited. This effectively bridges the gap between the law, which previously had not clarified that only a resident entity can be considered as a buyer in an import transaction, and practice, where Japan Customs had always been reluctant to accept a non-resident entity's purchase price as a customs value.

Moreover, this new provision could also potentially impact importers which currently use a non-resident entity's purchase price as a basis for customs value under alternative methods of determining customs value.

Entities which currently import products into Japan using a non-resident entity's purchase price as a basis for customs value should:

(1) Carefully determine whether or not the new provisions of the Law affects their imports;

(2) If yes, determine which alternative methods of customs valuation will apply.

Generally, the deductive method or computed method will apply, but the fall-back method may also be possible in certain cases. The application of alternative methods of customs valuation may result in additional administrative work and a higher customs value (as well as customs duty and import consumption tax). Depending on the facts, it may be possible to arrive at a customs value which closely approximates the current customs value.

(3) Depending on the circumstances, consult Customs to obtain their informal agreement.

When employing alternative methods of customs valuation, the particular method that is employed, and how certain key numbers used in the calculation are derived could significantly affect the resulting customs value. To mitigate the risk of future disagreement with Customs (and expensive customs claims), it may be prudent to obtain Customs' informal or formal agreement (advanced customs valuation ruling requests) in advance, in particular with respect to dutiable merchandise and complex cases.

(4) Prepare a customs valuation declaration.

Importers employing alternative methods of customs valuation will generally be required to submit a customs valuation declaration which describes the customs valuation methodology with their imports (this may be waived for duty-free items, etc.). Frequent importers may consider the merits of submitting a bulk customs valuation declaration (generally valid for two years) instead of individual customs valuation declarations which must be submitted with each import.

2. Evidentiary requirements

A new provision (Article 4-8, the previous Article 4-8 will become Article 4-9) has also been introduced requiring that the customs value derived from the application of transaction value method or alternative methods be reasonably supported by evidence and be calculated based on generally accepted accounting principles.

The Basic Circular to this Article suggests that Customs may request importers to submit documents which support the importer's customs valuation calculation, and if the importer is unable to comply, Customs may deny the application of that customs valuation calculation.

Accordingly, importers should be prepared for more intensive requests from Customs to provide supporting documents for their customs values.

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How we can assist you

Ernst & Young's Indirect Tax Team has extensive experience in navigating the customs rules, and can assist importers evaluate how the new provisions impact their imports, and as necessary, assist in the preparation of a documentation package which supports the customs value.

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