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**BEST PRACTICES
FOR
CUSTOMS VALUE AND
AUDITS/ISA**

GDLSK

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David M. Murphy is a partner with the law firm of Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP – the nation’s largest law firm devoted exclusively to international trade, export and Customs matters.

The firm represents a wide variety of clients worldwide, ranging from foreign governments,

privately held corporations and Fortune 500 companies engaged in the manufacture, importation, exportation and distribution. The firm is counsel in numerous administrative proceedings, litigation and antidumping. Mr. Murphy is a graduate of Fordham University and Brooklyn Law School, and a licensed Customs broker. He has taught a bi-annual review course to assist people in preparation for the licensing examination for Customs brokers since 1996. He is a frequent speaker before various trade groups and is an author and co-author of a number of articles.

Valuation Best Practices

- CBP presumes that all payments to foreign vendors are dutiable. Importer has the burden of showing otherwise.
- **COMMON PROBLEMS**
 - Assists (tools, dies, molds, materials components, engineering/designs).
 - Off invoice payments (supplemental payments).
 - Price adjustments.
 - Flow of information.
 - Related Party Pricing.
- Product development, Accounting, and Sourcing may not understand the effect of price adjustments/ additional payments, offshore development costs, and assists.

Valuation Best Practices

- **Proactive Approach**
 - Get Involved Early!
 - Written Internal Controls.
 - Periodic Education. Through simple, informative sessions with the critical departments, you can raise awareness of the potential issues.
 - Periodic Follow-up. Periodic reminders can facilitate the flow of information.
- Periodic Audit.
 - Customs Entry Review
 - Audit of Procedures.
- Record your efforts.

Valuation Best Practices

• **Related Party Transactions**

- Subject to scrutiny by CBP and IRS
- Transfer pricing adjustments creating significant customs compliance issues
- Differing Standards
 - IRS “arm’s length” standard -
 - Shown by Transfer Pricing Methodology, Transfer Pricing Studies and Advanced Pricing Agreements (APA)
 - CBP standards “circumstances of sale” or “test values”
 - Narrower focused - Product group based “goods of the same class or kind”

Valuation Best Practices

- **Related Party Transactions - Recent Insight –**
- HQ W548314 (May 16, 2012) - CBP's new policy on the application of transaction value in the context of post-entry adjustments.
 - A written “Intercompany Transfer Pricing Determination Policy”;
 - The U.S. taxpayer uses its transfer pricing policy in filing its income tax return;
 - The company’s transfer pricing policy specifies how the transfer price and any adjustments are determined with respect to all products covered by the transfer pricing policy **for** which the value is to be adjusted;
 - The company maintains and provides accounting details from its books and/or financial statements to support the claimed adjustments in the United States; and
 - No other conditions exist that may affect the acceptance of the transfer price by CBP.

Valuation Best Practices

- **Related Party Transactions - Recent Insight –**
- HQ H219515 (Oct. 11, 2012)
 - “based on the totality of the information considered and our review and examination of all relevant aspects of the transaction,” CBP concluded that the circumstances of sale test was met.
 - Industry Study on how it set prices
 - Data on Comparable Profit Margins of the Industry
 - Company Transfer Pricing Study in line with Industry Practice

Valuation Best Practices

- **Related Party Transactions – Best Practices**
 - Integrate Customs in transfer pricing documentation projects for Tax purposes.
 - APA or transfer pricing study can provide foundation .
 - Analysis should address product/product group to show customs test is satisfied.

CBP Audit Best Practices

- *Yikes!* I've been notified CBP is going to conduct an audit?
- Determine CBP's Audit Scope.
 - Issue Focused Audit, Quick Response Audit, or Focused Assessment?
- Assemble an Audit Team.
 - Imports.
 - Legal.
 - Sourcing.
 - Accounting.

CBP Audit Best Practices

- Assemble your Compliance Documents.
 - Procedures/Manuals.
 - Periodic Audit Results.
 - Agent and Supplier Agreements.
 - Training Logs.
- Do an overall internal review. – review trial balance activity, prior CBP requests, import liquidation status, etc.

CBP Audit Best Practices

- Set specific deadlines for internal responses.
- Confirm all CBP requests in writing.
- Record all responses in writing and retain copies of everything given to the auditors.
- Maintain a log/timeline of all open requests.
- “Package” your responses. – Don’t simply provide documents, tell your story.
- Keep lines of communication open.

Importer Self-Assessment Program

- Requirements:
 - U.S. resident importer with at least two years of importing history and current member of C-TPAT.
 - Develop, document and implement internal controls.
 - Make appropriate adjustments to internal controls.
 - Perform self testing based on risk assessment.
 - Maintain an audit trail from financial records to import documents.
 - Make appropriate disclosures.
 - Conduct self-testing and maintain results for three years
 - Submit an annual notification letter to include required information.

Importer Self-Assessment Program

- It is a best practice! But is it for us?
- Cost/Benefit Analysis.
 - The costs are real and require long term commitment of company resources.
 - Benefits?
 - Risks?

Importer Self-Assessment Program

- Promised Benefits
 - Exemption from comprehensive audits.
 - Less CBP intrusion - Reduced cargo exams, Faster clearance, Less post release inquiries (CF-28, CF-29).
 - Coverage available for multiple business units.
 - Enhanced Prior Disclosure.
 - Participation can be considered as a mitigating factor in cases of penalties or liquidated damages.
 - National Account Manager.
 - Access to Centers of Excellence & Expertise (CEEs).