

Transfer pricing year-end adjustments and relation with customs

Depending on the given tax jurisdiction, if there is qualified ownership or control between enterprises belonging to a Multi-National Enterprise (“MNE”), the arm’s-length principle (“ALP”) kicks-in to determine proper transfer prices in cross-border intra-group transactions. TP adjustments are widely used by MNEs in order to align intragroup transfer prices or margins to the results that would have been obtained if uncontrolled taxpayers had engaged in comparable transactions under comparable circumstances.

- **Compensating adjustments** (or voluntary adjustments/year-end adjustments) are adjustments in which the taxpayer reports a transfer price for tax purposes that is, in the taxpayer’s opinion, an arm’s length price, even though this price differs from the actual amount charged between the parties;
- **Primary adjustments** are upward adjustments made to a company’s (or enterprise) taxable profit by a Tax Authority, as a result of applying ALP to transactions involving another company (or enterprise) resident in a different jurisdiction;
- **Corresponding adjustments** are downward adjustments to a company’s (or enterprise) taxable profit by a Tax Authority as a result of a primary adjustment made by a different Tax Authority, in another jurisdiction, to the other party to the intragroup transaction. Corresponding adjustments are not automatically applicable by taxpayers and shall undergo specific advanced dispute resolution procedures. They can

play a key role in mitigating or eliminating instances of international economic double taxation.

When considering TP adjustments, it is important to evaluate **different countries’ views** on the matter. Upward adjustments are generally mandatory, while downward adjustments, if not reflected in the books, shall undergo refund requests and/or MAP procedures.

Compensating adjustments should be recognized in the fiscal year in which they are made, and the Group’s transfer pricing policy should be in accordance with the agreement between the parties involved in the transactions.

There are some best practices when considering the management of TP adjustments:

- ensure a consistent TP adjustment process over time;
- in the absence of clear rules, the ex-post documentation of such adjustments may be challenging;
- practice shows that setting guidance either in an I/C Agreement or a TP Policy is instrumental for tax directors and risk mitigation;
- define clear responsibilities for the TP adjustment process (e.g., finance/tax/controlling/VAT, customs);
- following such policies reduces TP documentation efforts in the future (often years after the FY in which the adjustment has been made).

When considering the **relation between TP and Customs**, there is a nature of conflict. TP considers margins/profits (with no connection to a specific transaction value), whereas Customs strictly examines transaction value. This leads to some **practical issues**:

In case of TP adjustments that imply a retroactive **upward** adjustment of customs value, it’s important to amend import declarations to fix the past and voluntary **payment on unpaid duties**;

In case of TP adjustments that imply a retroactive **downward** adjustment of customs value, there’s the possibility to amend import declarations to request a **refund of duties**;

In the past, the absence of a simplified system resulted in situations of **tax risk** (upward adjustment) or **over taxation** (downward adjustment);

TP documentation becomes a key element to support customs value retroactive adjustments towards Customs authorities.

A **solution** to the above issues is a simplified procedure for customs valuation when the customs’ value of imported goods is unknown at the moment of import. The authorization is granted (given that the company meets AEO criteria) by customs authorities (art. 166 UCC), enabling an import declaration amendment using a recapitulative declaration. There are two potential outcomes:

- the definitive value is higher than initially

declared

- this reduces the risk of potential customs audit and avoids penalties, late-payment interest, and additional charges;
- the definitive value is lower than initially declared
- this facilitates obtaining a customs duties refund due to overpayment and avoids potential penalties.

This simplified procedure is **mandatory** for companies applying periodical TP adjustments that impact on customs value and require an adjustment of import declarations.

Do not hesitate to reach out to your local transfer pricing specialist for further assistance on the matter.

The European Andersen
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Please do not hesitate to reach out to your local Andersen transfer pricing specialist with any queries on the matter.

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