

# **Tariffs and Taxes: Navigating Complexities of Cross-Border Commerce**

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## Agenda

- **Tariffs have taken on a new importance for many businesses with cross-border supply chains**
- **Tariffs are not applied equally to all imported products**
  - Vary by country of origin
  - Vary by product
  - Affected by non-dutiable charges and valuation
- **Trade and tax policies can interact in unexpected ways**
- **Opportunities exist for businesses to maximize efficiency in their trade and tax planning**

## Introduction to Tariffs

- **Who pays tariffs?**
  - Importer of record
  - Role of other parties in a transaction
- **How are tariffs imposed?**
- **How is customs value determined?**

## Introduction to Tariffs, cont.

- **Determining the applicable tariff rate:**
  - Different rates depending upon country of origin
  - Different rates depending upon product
  - Exclusions and Exemptions
- **Not all costs are dutiable**

## Interaction between Tariffs and U.S. Tax Law

- **Tariffs represent both economic and tax costs**
  - Transactions between unrelated parties present the easiest case
- **Special rules exist for inter-company transactions**
  - Historical perspective: high tariffs and low coordination between Customs and the IRS led to abuse
  - The current tax law encourages coordination between pricing for trade and tax purposes
  - Until recently, tax considerations often drove inter-company pricing

## Strategies for Effectively Managing Tariffs

- **The rules provide flexibility in valuation methodologies in some cases**
  - The structure of a business's supply chain can impact which methodologies are available
  - Incoterms and contractual terms with customers can impact deductions and ultimate liability

## Tax Considerations

- **Changes in the supply chain can have tax consequences, both within and without the United States**
- **Tariff mitigation can increase tax liability and *vice versa***

## Tax Considerations, cont.

- **For inter-company transactions, existing policies may already present some flexibility to mitigate costs**
  - Working within existing frameworks may help to reduce audit risks
  - Competing interests between taxing authorities may be unavoidable
- **Larger changes may be possible by re-evaluating existing policies**
  - Larger changes likely increase risks



## **Bridging Tariffs and Tax**

- **Many businesses have historically thought of trade and tax issues as entirely separate**
- **Clients should be encouraged to think holistically**

## Potential Pitfalls

- **Most concerns applied before and continue to apply now**
  - Documentation and compliance
  - Coordination of trade and tax policies
- **Today's higher costs increase the risks**
- **Taking steps to mitigate risks in the United States can have an opposite effect overseas**

## Related Considerations

- **Making changes to address tariffs can have unintended consequences**
  - Supply chains are complex and sometimes rigid
  - Modifying operations can open Pandora's box
  - Potential for dumping allegations?
- **The current environment also presents practical obstacles**
  - How to identify comparables for transfer pricing purposes?
  - Like companies or like products?

## Dispute Resolution Tools – Tariffs

- **Disputes with Customs can be resolved short of litigation**
- **Customs also offers programs that allow importers to resolve disputes proactively**
  - Reconciliation
  - Voluntary reliquidation
  - Prior disclosure

## Dispute Resolution Tools – Tax

- **Similar tools are available to resolve disputes with the IRS without resorting to litigation**
  - Protests and IRS Appeals
  - Claims for refund
- **Additional options are available where inter-company transactions are at issue**
  - Mutual agreement procedure cases under bilateral income tax treaties
  - Advance pricing agreements as a proactive measure

## Recent Developments

- The tariff environment is constantly evolving
- The IRS has not yet had an opportunity to respond
- What does the future hold?

## A Fluid Situation

- **The current environment can make it difficult to advise clients about the future**
  - Businesses are aware that solving today's problem may not address tomorrow's issue
- **Because tariffs are more strongly at the forefront, even the current framework is subject to change**
  - Customs may re-evaluate the options available to importers as different methodologies are adopted and employed
  - Likewise, the IRS may reconsider prior rulings and positions

## Final Thoughts

- **Many of the greatest opportunities to mitigate costs belong to businesses with integrated supply chains, but so do the greatest risks**
- **Consistency between trade and tax policy was and remains key; intracompany coordination will pay off**
- **Businesses have been understandably reluctant to respond to recent changes and are mitigating uncertainty**



## Questions?

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