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By PwC Deutschland | 14. August 2013

Import value of DVDs includes estimated royalties payable by subsequent purchaser

The Supreme Tax Court has held that the import value of film DVDs shall include an uplift to the purchase price to reflect royalties payable by the subsequent purchasers on their proceeds from hiring or selling the films. This uplift can be estimated.

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A pair of US film producers gave film copies free of charge to a Taiwanese mass producer of DVDs. This mass producer forwarded the DVDs with the films to its German associate who then sold them to the European subsidiaries of the film producers. Unsold items were to be destroyed. The subsidiaries of the film producers paid royalties to their respective parents based on their proceeds from hiring or selling the DVDs to the public. The importer declared the dutiable value of the DVDs at its own cost of import. Essentially, this was no more than the cost of a blank DVD. Customs reassessed the dutiable value to include an estimate of the royalties ultimately payable by the distribution subsidiaries of the film producers. The importer objected on the grounds that it had no information on the royalties payable by its own customers, pointing out that the estimate by Customs was based on extrapolations from customs audit reports without identifying the individual films or producers.

The Supreme Tax Court has upheld the position of Customs. The importer was a link in a fixed business chain and had no option but to sell the DVDs after import to two specific customers in quantities specified by them. Its own purchase cost included nothing for the use of the copyright inherent in the films carried on the DVDs and its own sales proceeds were based on its own costs together with a small handling fee. The DVDs had been imported in a physical condition suitable for further distribution to those wishing to see the films and their value on import included all payments to be made subsequently in recognition of their condition at the time of import. This value thus included royalties due by the importer's customers, especially as the importer was bound to follow the set business chain. In principle, it was up to the importer to estimate the dutiable value in the absence of an exact figure and then to justify the valuation to Customs; however, if the importer declared himself unable to make the estimate for lack of the necessary information, it was up to Customs to make their own estimate. This could be based on other examples of film royalties – such as those available from Customs audit reports – even if the specific examples remained anonymous. In any case, as the court pointed out, the royalty ultimately paid in a given instance did not decisively indicate the import value of the specific DVD as it was affected by events occurring after import, such as the actual method of distribution chosen (sale or hire). Thus some degree of averaging was inevitable.

Supreme Tax Court judgment VII R 56/11 of July 4, 2013 published on August 14

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