



We think International



February 2018

Transfer pricing adjustments and EU VAT

A first orientation

In the news

- IKEA, Google, Starbucks
- BEPS, country-by-country reporting
- cross border supply of services or goods within a multinational?

Transfer pricing

- CIT concept of TP
- Accountants concept of TP (if any)
- Indirect tax concept of TP (if any)
- ... concept of TP?

Regulations

OESO Guidelines

EU VAT directive articles 72 and 80
(since 2006)

EU customs regulation 143
(connected parties)

TP in VAT legislation

Art. 72

“open marked value” is

1. the price that would have been paid for the same transaction in the same marketing stage to a supplier at arm's length, or

if no such supply can be ascertained,

2. the price that is not less than the purchase price of the supply of goods or the full cost of providing the service

TP in VAT legislation

- Art. 80

In order to prevent tax evasion or avoidance, states can **opt**, for transactions involving family or other close personal ties, management, ownership, membership, financial or legal ties (*conneted parties*) as **defined** by Member States the taxable amount is to be the open marked value in situations.....

TP in VAT legislation

Art. 80 (continued)

when:

1. the consideration is lower than “open marked value” and recipient has limited or no right to deduct VAT
2. (...) the supplier does not have a full right to deduct VAT and the supply is exempt
3. Consideration is higher than the “open marked value” and the supplier does not have full right to deduct VAT.

TP in Customs legislation

- Art. 143 Cust Reg. 2454/93
 - Extensive description of “connected parties”
- Interpretation of EU law

Questions!

- Who thinks that a voluntary adjustment under transfer pricing policies should have an impact on VAT?
- Who thinks that a compulsory adjustment made by the tax administration should have an impact on VAT?
- What to think of a compulsory adjustment and the CPA wishes to alter the financial statements?

My view

- Compulsory (tax service)
 - Modification itself doesn't alter the taxable amount
- Adjusted after modification.
- Voluntary
 - Modification does alter taxable amount

Consequences

- What if VAT follows TP when adjusted in later years: filing periods, invoice requirements, penalties, interest? Per EU member state!
- And how about TP following VAT adjustments?

MY CONCLUSIONS

- Voluntary adjustments > VAT impact
- Mandatory corrections > no VAT impact
- Mandatory corrections followed by invoices > VAT impact
- VAT corrections will be troublesome/costly when made in later years

The drinks are on GGi!

