Asia Pacific Customs and Trade Conference

What the BEPS?!?

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Agenda

- Introduction to BEPS
- Potential impact of BEPS on customs and trade
- Preparing for BEPS
Introduction to BEPS
Introduction to BEPS

BEPS in context

- What is BEPS
  - OECD’s base erosion and profit shifting project
- Why BEPS now
  - Government desire to protect tax base
  - Public perception of whether or not multinational companies pay their “fair share” of taxes
  - Perceived need to correlate tax liabilities with operations
- What OECD is trying to accomplish
  - Multi-step plan to reshape international tax rules
  - Encourage global consistency in the way tax rules are applied
**BEPS project timeline**

**2012**
The OECD BEPS project starts

**2013**
G20 governments urge OECD to move against BEPS arrangements

**July 2013**
The OECD issues the BEPS Action Plan

**2014-15**
The OECD releases reports and discussion drafts on all topics

**2015**
The final reports are scheduled for release by December 2015
Introduction to BEPS

BEPS Action Plan

- OECD actions organized into 15 “Action Items”
- Action Items that may have most relevance for customs and trade
  - Action Item 3: Strengthen Controlled Foreign Corporation (“CFC”) Rules
  - Action Items 8, 9 and 10: Transfer Pricing Outcomes
  - Action Item 13: Transfer Pricing Documentation
- Types of impact
  - Potential change in trade flows
  - Potential change in valuation
  - Consistency between transfer pricing documentation and documentation needed to support customs positions
Introduction to BEPS

Key focus areas of BEPS project from a trade perspective

• Management of intellectual property and intercompany licensing agreements
  - What are the value drivers in the business, how are they developed, which entities are responsible for development, how are they deployed
• Functions and substance of regional centres / headquarters / principals
• Mapping and alignment of functions, risks and assets within the organization and appropriateness of tax positions
**Introduction to BEPS**

**Illustration**

**Before**

- HQ / Mfg. Co
- Distribution Co
- Distribution Co
- Distribution Co

Product sales
Product sales
Product sales

5% OM
5% OM
5% OM

**After**

- HQ / Mfg. Co
- Regional Principal
  (low tax jurisdiction)
- Related Party
  Contract Manufacturers

- Limited Risk Distributor
- Limited Risk Distributor
- Limited Risk Distributor

Product sales
Product sales
Product sales

2% OM
2% OM
2% OM

1. HQ license right to utilize IP to mfg and distribute products in territory to regional principal
2. Regional principal utilizes related parties to manufacture and distribute products in region
Introduction to BEPS

Illustration of Transfer Pricing Documentation Requirements

Effective 1 January 2016

Master File
Overview of the Group’s global operations

Local File
Information specific to the local entity

Three tier TP Documentation

Country-by-country reporting
Group wide financial information
The potential impact of BEPS
Potential impact of BEPS on customs and trade

- Review of existing operations and transaction flows under BEPS may result in a restructuring of trade flows
  - Sourcing routes may change as a result of restructuring, for example
    - Change in regional principal or regional HQ locations
    - Relocation of procurement centres
  - Possible risks or opportunities around FTA utilisation
- Changes in valuation due to revision of transfer pricing arrangements, e.g.
  - Reallocation of functions and risks along value chain may result in new intercompany pricing model
  - Licensing of intellectual property may change and impact value if royalties are deemed to be dutiable
Potential impact of BEPS on customs and trade

• Revised transfer pricing documentation and characterization of business may impact prior positions established with customs authority
  - Consistency with previous documentation and documentation used for other purposes, e.g. preferential origin
  - Possible access for the authorities to previously unknown valuation information, e.g. CBCR documents on overseas Gross Margins

• Changing attitude of the customs authorities
  - Increased scepticism of the value of TP documentation and studies
  - Possible tightening of customs value related documentation requirements
Preparing for BEPS
Preparing for BEPS

• Develop an understanding of global tax footprint and relationship to operations
• Help to facilitate discussion between operations and tax to optimize impact of BEPS compliance
• Engage in early discussions with Customs on the impact of BEPS on your companies import pricing
• Countries in the process of implementing BEPS related changes in tax law:
  - Australia
  - China
  - France
  - Japan
  - Singapore
  - UK
Questions?