International Supply Chains – Tax Driven Customs Compliance

Regulating for Globalization
22/06/2018

Jeff Snyder (Crowell & Moring)

Please refer to this post as: Jeff Snyder, 'International Supply Chains – Tax Driven Customs Compliance', Regulating for Globalization, 22/06/2018, http://regulatingforglobalization.com/2018/06/22/international-supply-chains-tax-driven-customs-compliance/

Amidst the chaos created by "disTrumption"[1] globalization rolls on and international business pursues TESCM, or tax efficient supply chain management. What does this mean for trade and customs?

TESCM arises from the OECD BEPS (base erosion and profit shifting)[2] initiative and will continue to drive multinational tax planning. The OECD effort is creating a restructuring of international tax planning approaches. This has a direct correlation to indirect tax – import duties. Unfortunately (although in some cases it may be a good thing) national systems for income and indirect taxes are often not unified in law or administration. Separate legal histories have created the law governing each. Customs law has evolved independent of tax law and vice versa. How are companies to manage the multiplicity of conflicts presented by valuation rules as supply chains are restructured under TESCM?

Practitioners have teamed up to explore these issues not only within jurisdictions but also across jurisdictions, to share lessons learned and seek to optimize TESCM in the post-BEPS world. One was a March panel at the annual conference of the IPBA in Manila.[3] Speakers from 9 jurisdictions analyzed and reported on the tax-customs interaction in:

Australia
New Zealand
United States
China
Pakistan
Thailand
India
Malaysia
Myanmar

Among the highlights and lessons learned:

- the impact of BEPS Actions 8, 9 & 10 the context of TESCM;
- the permanent establishment risk and post-BEPS Action 7 changes;
- the new US tax law, The Tax Cuts and Jobs Act of 2017, and its impact on TESCM;
- transfer pricing is an art, not a science;
- the courts have something to say, particularly in the chemical and pharma industries;
- government actions are driven by their role in the Global Forum on BEPS;
- be prepared to manage the intricacies of the interrelationship of direct and indirect tax;
- be on alert for initiative aimed at marketing hubs, diverted profits tax, and the ever present effort by governments to be sure they get their "fair share;"
- be aware of the ripple effect; everything is connected to everything else in TESCM;
- Be mindful of the differing levels of experience as governments race to adapt systems and resources to the dynamic multinational corporation.

The issues are far from settled. Indirect tax experts must continue to manage internally – with direct tax resources, finding ways to be a part of the action, and externally with governments who too often assume that a company's valuation may we'll be wrong.

Of course this is a conversation that will go on long after "disTrumption" is gone. The life of customs valuation practitioners will never be dull.

[1] When I first used this term during the presentation in March of this year I was excited to think that I had coined a term and thought I might copyright it; alas, I was mistaken and it appears that many others, no surprise, had the same impression, long before I did. https://twitter.com/distrumption?lang=en

[2] http://www.oecd.org/tax/beps/

[3] Tax and International Trade Committee joint session (Thursday, 15 March 2018), Inter-Pacific Bar Association (IPBA), entitled "BEPS and Tax & Customs Efficient Supply Chain Management." https://ipba.org/home/ (selected materials available on request).