



**World Customs  
Organization**

# Customs Valuation and Transfer Pricing

Knowledge Academy 2020

# Transfer Pricing

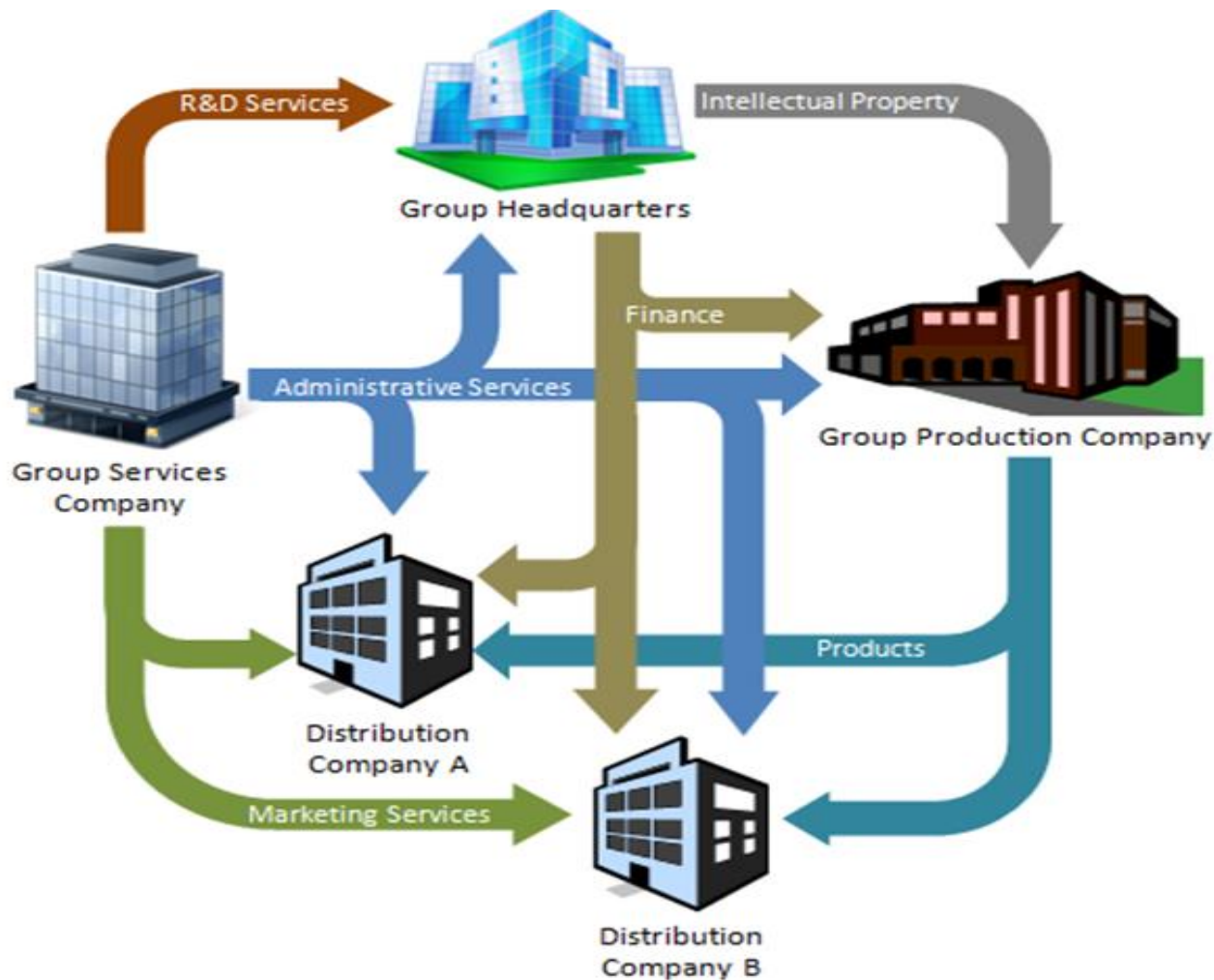
## -What is transfer pricing?



- “Transfer Pricing” is a term used to describe how MNEs set prices for the transfer of property/goods/services between (or within) their related companies
- A price established for property, goods & services transferred between companies of a multi-national enterprise (“MNE”) that control each other or that are controlled by a common entity.

# Transfer Pricing

## -What is transfer pricing?



# Transfer Pricing -Significance



- Sales within MNEs account for over 60% of international trade
- Transfer pricing can be used to shift profit to low tax jurisdictions
- If applied in accordance with rules, transfer pricing is a legitimate practice
- However, abusive transfer pricing practices exist
  - This is subject of G20/OECD BEPS programme

# OECD Transfer Pricing Guidelines



- Guidelines provide an international standard for direct taxation authorities (not restricted to OECD Members)
- Guidelines require that determination of a corporate tax liability in each tax jurisdiction is based on the “**arm’s length principle**” incurred.
- First Issued in 1979
- Substantially revised in 1995 and 2009, the latest edition was released in 2017

# WTO Customs Valuation Agreement

## - Article 1.2(a)

- In determining whether the transaction value is acceptable, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable
- In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price

# Circumstances of sale

## – Interpretative Note to Article 1

### *Examples:*

- Has price been settled in a **manner consistent with the normal pricing practices of the industry in question** or with the way the seller settles prices for sales to buyers who are not related to the seller?
- Is price adequate to ensure **recovery of all costs plus a profit which is representative of the firm's *[i.e. seller's]* overall profit realized over a representative period of time** (e.g. on an annual basis) in sales of goods of the same class or kind?

## Test values – Article 1.2 (b) & (c)

- In a sale between related persons, the transaction value shall be accepted when the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
  - (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
  - (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
  - (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

# OECD Transfer Pricing Guidelines Comparison with WTO Valuation Methodology



## OECD methodology

Comparable Uncontrolled Price (CUP)

Resale Price Method

Cost-plus Method

Transactional Net Margin Method

Profit Split Method

## WTO Valuation methodology

Identical and similar goods method (Article 2 & 3)

Deductive value method (Article 5)

Computed value method (Article 6)

Fallback value method (Article 7)



# Key differences



## Customs Valuation

- Goods only
- Transaction based
- Confirmed at point of customs clearance

## Transfer Pricing

- Goods, services & property
- Based on aggregates/annual
- Confirmed retrospectively (some years after event)

# Key differences



- Customs aim to verify whether a price has been influenced in a related-party transaction
- Multi-nationals offer a transfer pricing study as “proof” that the transactions are “arm’s length ”

## Commentary 23.1

### *Examination of the expression “circumstances surrounding the sale” under Article 1.2 (a) in relation to the use of transfer pricing studies*

- First instrument of the TCCV to refer to transfer pricing
- Key questions:
  - *Has price been settled in a manner consistent with the normal pricing practices of the industry?*
  - *Is price adequate to ensure recovery of all costs plus a profit representative of the firm’s (seller’s) overall profit realized over a ..period of time?*

## Commentary 23.1

- The use of a transfer pricing study as a possible basis for examining the circumstances of the sale should be considered on a case by case basis
- Any relevant information and documents provided may be utilized for examining the circumstances of the sale
- A transfer pricing study could be one source of such information.



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**Thank you**

