CHAPTER 9

VALUATION (2)

9.1 Introduction

In the last chapter on Valuation, we looked at method 1. We now need to consider the other methods for valuing goods. We have already said that if the parties to the sale are related and the price has been influenced by the relationship, we cannot use method 1. Therefore, we move on to method 2.

9.2 Method 2 – sales of identical goods

Method 2 is contained in Article 30(2)(a) of the Code. This says that the value of the goods shall be the **transaction value of identical goods** that are **sold for export** to the community and exported **at or about the same time** as the goods being valued. Art 30(2)(a) 2913/92

Therefore, if the same goods are sold to an unrelated party, this price could be used as the value of the goods. There are some extra conditions for using this method and they are contained in Article 150 onwards of the Implementing Regs. For example, the goods should be sold in substantially the same quantity, as the goods being valued. Art 150 2454/93

Illustration 1

Imagine the import we are trying to value is 10,000 bicycles, for which we have paid £100 each. You would not be able to compare the price paid if only 10 bicycles were imported, for which we might pay £135 each. The chances are the 10,000 bikes would cost less each than 10 bikes. You can, however, use different quantities if the price is adjusted to take account of the difference.

Initially, when looking at imports of identical goods we have to look at **imports from the same exporter**. However, you **can use sales from a different person** if your exporter does not sell to anyone else.

What if there aren't any identical goods, or we can't get evidence about the price of identical sales because unrelated exporters don't want to tell us their price sensitive information? In that case, we have to move on to method 3. Art 115(4) 2454/93

9.3 Method 3 – sales of similar goods

This is contained in Article 30(2)(b) of the Code. Method 3 has pretty much the same rules as for method 2, but instead of looking at identical goods, we look at **similar goods**. Similar goods means the goods can **carry out the same tasks** and are **commercially interchangeable**. Again, they should be exported at the same time, so we could use a sale of similar goods to an unrelated party, and again we are looking at substantially the same quantity. Art 30(2)(b) 2913/92

If there aren't any similar goods being exported by the same exporter, then like method 2 you can look at a different exporter. To see the legislation in a way that is much easier to understand, take a look at Annexe 23 of the Implementing Regs. Annex 23 2454/93

9.4 Method 4 – 'sales minus'

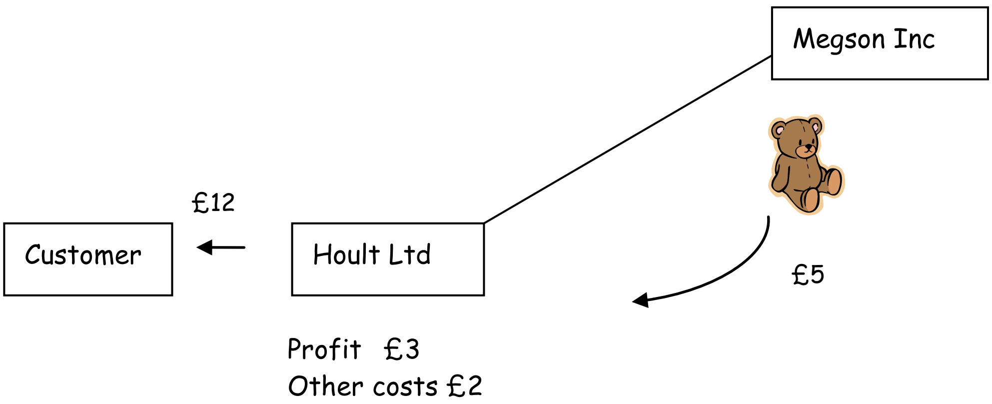
If we fail to find sales of identical or similar goods we need to move on to the next method. This is method 4, and is detailed in Article 30(2)(c) of the Code. Art 30(2)(c) 2913/92

The legislation says that if the importer chooses to he can **switch the order of methods 4 and 5 around**. Art 30(1) 2913/92

Method 4 is often referred to as the '**sales minus'** method, as it is **based on the selling price of the imported goods** in the EU to unrelated parties, which is then adjusted to find an import price.

Illustration 2

Look at the diagram below:



Hoult Ltd imports teddy bears from its parent company, Megson Inc in the US. The price of the teddy bears is affected by the relationship between the two parties. Each teddy bear is sold for £5. Hoult Ltd then sells the teddies onto unrelated UK customers for £12 each. The price to the end customer includes Hoult's profit of £3, customs duty, administration costs, advertising and UK transport costs, which amount to £2.

Selling price	£12
less:	
profit	(£3)
customs duty, admin, advertising,	
UK transport	(£2)
	£7

If we deduct the normal profit and costs incurred on the goods before they are sold to the end customer, we arrive at a value of £7 which represents what Hoult would pay if he were buying the teddy bears from an unconnected party. Note that the £7 is higher than the artificial price agreed between the parties of £5.

To be able to use this method, the sale to the EU customer must take place **within 90 days of the goods being imported**. Art 152(1)(b) 2454/93

Now what if the teddies were repackaged before being sold to the UK customers but are still sold for £12? You can still use method 4. But you would need to deduct the further processing costs incurred by Hoult Ltd. These further processing costs could amount to £1 and now bring the cost of our teddy bear to £6. Art 152(2) 2454/93

Selling price	£12
less:	
profit	(£3)
customs duty, admin, advertising,	
UK transport	(£2)
other costs	(£1)
	£6

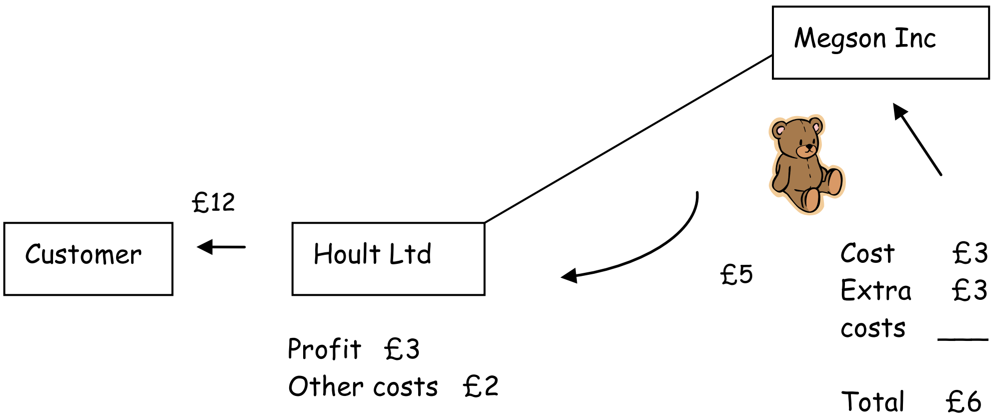
9.5 Method 5 – 'cost plus'

Remember that the order of this method and method 4 can be switched at the importer's request. Article 30(2)(d) of the Code says that this is the computed value method, or 'cost plus' to which it is commonly referred. Art 30(2)(d) 2913/92

This method looks at the exporter's costs to try and arrive at the cost of the goods at the time they are imported.

Illustration 3

Carrying on with illustration 2, look at the diagram below:



Megson Inc. exports the teddy bears to its subsidiary, Hoult Ltd. Megson purchases the teddy bears for £3, it then packages the teddy bears and estimates that administration expenses, transport, insurance and normal profit would amount to a further £3. This would bring the cost of the teddy bears to £6.

We have already mentioned that as the parties are related, Megson sells each bear to Hoult for £5. What this method of valuation does is provide an arms length value of £6 for each of the teddy bears, by looking at the costs of the exporter.

To be able to use this method, the **importer would generally have to be related to the exporter.** Can you imagine phoning up your supplier to get a detailed breakdown of their costs and profit margin incurred on the goods? They are not likely to give you this price sensitive information.

As we previously mentioned, methods 4 and 5 can be switched at the importers request. We came out with a value under method 4 of £7 – looking at the first example where the teddy bears were sold on to UK customers without further processing. As the value under method 5 is lower than £7, the importer would choose this method.

9.6 Method 6 – 'Fallback'

Method 6 is the last method and is known as the 'fall back' method. Method 6 basically allows you to value your goods according to '**reasonable means'**. This is where you can perhaps use a **hybrid of the other methods** to find an acceptable value.

Illustration 4

For example, the 90 day time limit for method 4 could be extended.

There are a few restrictions listed in Article 31(2), which you need to look at when using this method. For example, you cannot base it on the selling price of goods produced in the community - you need to look at imported goods. But otherwise there is scope for you to come to an agreement with Customs. Art 31(2) 2913/92

Example 1

You need to match the method with the correct description.

Method No.	*Description*
1	Deductive/sales minus
2	Fallback
3	Identical goods
4	Price paid/payable
5	Similar goods
6	Computed value/cost plus

9.7 Administration – Valuation declarations

Once you have established your value – using methods 1 to 6, you need to declare to Customs that the value you have used is in accordance with the legislation. Art 178 2454/93

This is done through the completion of a **Form DV1**. Annex 28 2454/93

It contains information about the **buyer and the seller**, whether the **parties are related** in any way and if they are, whether **the p rice has been influenced** by that relationship. It also asks whether there are any **royalties** or **licence fees** that relate to the goods and paid as a condition of the sale. It asks for details about the **invoice price** (this could be in a foreign currency, e.g. dollars) and any **additions** required by Article 32. For instance, **goods supplied by the buyer free of charge to the seller** or at a reduced cost. Art 179(c) 2454/93 Art 32 2913/92

The final part of the form looks at any **deductions** such as **buying commissions**, and finally the value declared for duty purposes, converted to sterling. The conversion happens at Customs published rates of exchange.

In the UK, this form is called a **C105A** for imports that use **method 1** and a **C105B** for **methods 2 to 6**. There are some exceptions to the need for a declaration. Art 179 2454/93

For example, Art 179(1)(a) says that where the value of the goods in the consignment is a maximum **10,000 Euros**, a declaration is not required. This is converted in the UK to **£6,500**. The idea behind this exception is to reduce the administrative burden on both the importer and Customs where the amount of duty at stake is minimal. You cannot however, manipulate the rules by keeping each consignment deliberately under the threshold.

Another example is Article 179(1)(b). If the imports are of a **non commercial nature**, for instance, a private individual buying a CD from an American internet company, a declaration is not required. This is likely in any event, to come within the maximum £6,500 rule, but would also apply to such a scenario where a person is importing a rather expensive piece of jewellery which could exceed the £6,500 limit.

A declaration can be lodged with Customs to cover imports to the same buyer from the same seller for a **3 year period**. Instead of attaching a declaration with each import entry, the number of the valuation declaration is quoted in a box on the SAD. In the UK, the forms are called **C109A**, which is used for **method 1** and **C109B** for **methods 2 to 6**.

From April 2008, Customs has relaxed the requirement for importers to lodge valuation declarations in the UK. In their Business Brief 16/2008 they state that importers will not be required – in 99% of cases – to complete a valuation declaration at the time of import. Instead, one will only be required, if requested by Customs, for example, on a post-importation audit. BB 16/2008

The legal basis for this waiver is Art. 179(c). It says that where the submission of particulars in not necessary for the application of the Tariff and it is not essential for the correct application of duties then the requirement for a declaration can be waived. Art 179(c) 2454/93

Customs has stated that a declaration may still be required if the importer is intending to use the value of an earlier sale.

This is a legal declaration. As such, if you make it and it is wrong then Customs could invoke penalties. Such penalties could be levied under Section 167 of the Customs & Excise Management Act of 1979. s. 167 CEMA 1979

Section 167(1) applies if someone "**knowingly or recklessly**" makes an **untrue declaration.** This could result in prison of **six months** if convicted by a **Magistrates court** and/or a **fine of the prescribed sum,** currently **£5,000**. If convicted in the **Crown Court** however, an **unlimited fine** could be imposed and you could go to **prison** for **two years**.

Section 167(3) is not as harsh. This applies where the **declaration is still untrue**, but the person **does not make it knowingly or recklessly**, but perhaps **innocently** makes an error. You cannot be sent to prison but can still be fined up to **level four** on the standard scale. You **cannot be tried in the Crown Court** for making an innocent mistake.

If you remember we've looked at these penalties before. And don't forget, Customs might decide not to prosecute but invoke a **civil penalty**. For a reminder on this see the chapter on "Prohibitions, restrictions and penalties". FA 2003 Watch out if you are signing the declaration, you could be liable if anything goes wrong!

Answer 1

Method No	Description
1	Deductive/sales minus
2	Fallback
3	Identical goods
4	Price paid/payable
5	Similar goods
6	Computed value/cost plus