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STATUTORY INSTRUMENTS

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**2018 No. 1248**

**The Customs (Import Duty) (EU Exit) Regulations 2018**

**PART 12**

**Valuation of chargeable goods**

**CHAPTER 1**

**Preliminary**

**Interpretation**

**107.**—(1) In this Part—

“the 90 day period” means the period of up to 90 days ending immediately before the date on which the chargeable goods<sup>(1)</sup> are released for free-circulation<sup>(2)</sup> but that period does not include any period which is prior to the date on which the chargeable goods were imported into the United Kingdom;

“buying commission” means a commission paid by a buyer of goods to an agent of the buyer in respect of services provided by the agent to the buyer to enable the buyer to import chargeable goods;

“comparable goods” has the meaning given by regulation 127(1);

“full value” means the total amount which would be payable in an arm’s length transaction for, or in connection with the importation of, goods;

“identical goods” has the meaning given by regulation 127(1);

“Method” means a method of valuation set out in chapter 5 of this Part; and “Method N valuation”, where N is a whole number between 1 and 6, is a Method so numbered;

“related persons” has the meaning given by regulation 128;

“similar goods” has the meaning given by regulation 127(1);

“specified matters” has the meaning given by regulation 108(7) in respect of items to be included as elements of a transaction value and by regulation 108(8) in respect of items to be excluded as elements of a transaction value;

“time the goods are imported” is to be construed in accordance with section 5 of CEMA 1979<sup>(3)</sup>.

(2) In chapters 2 to 5 of this Part in relation to a transaction value of goods, “seller” means the person who in the transaction sells the goods for export to the United Kingdom and “buyer” means the person who in the transaction buys the goods from the seller.

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<sup>(1)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(2)</sup> See section 3(3)(a) of the Act on the free-circulation procedure.

<sup>(3)</sup> Section 5 is amended by paragraph 6 of Schedule 7 to the Act.

## CHAPTER 2

### Use of Methods of valuation

#### Use of Methods of valuation

**108.**—(1) To determine the value of chargeable goods presented to Customs on import(4) which value is to be included in the Customs declaration, follow steps 1 and 2.

(2) Step 1: apply in the following sequence—

- (a) Method 1 valuation;
- (b) Method 2 valuation; and
- (c) Method 3 valuation,

until a Method is found by which the full value of the goods can be readily determined and if none is found, proceed to step 2.

(3) Step 2: apply in the following sequence—

- (a) Method 4 valuation then Method 5 valuation, or in reverse order as the person who makes the Customs declaration elects; and
- (b) Method 6 valuation,

until the full value of the goods can be readily determined.

(4) But steps 1 and 2 are subject to regulation 109.

(5) A transaction value(5) must be adjusted as necessary to include and exclude as elements of the value such of the specified matters which are not already taken into account as elements of the value.

(6) Where—

- (a) a Method is being applied which uses a transaction value;
- (b) the value of a specified matter cannot be readily determined;
- (c) regulation 109 does not apply; and
- (d) HMRC consider that the value would be a significant element of the value of the goods,

that Method is not to be used in the valuation of the goods.

(7) The specified matters to be included as elements of a transaction value are—

- (a) the value of each item set out in regulations 111 to 113 but taking into account any depreciation for an item which is a re-used item;
- (b) where applicable, any adjusted amount described in regulation 114; and
- (c) any amount which is payable in respect of the goods or their importation at a time other than the time when the goods are sold for export to the United Kingdom.

(8) The specified matters to be excluded as elements from a transaction value are the value of each item set out in regulations in chapter 4.

(9) HMRC may presume that where the buyer and seller of chargeable goods are related persons, in the application of Method 1 valuation, the transaction value of the goods is not the full value unless HMRC are satisfied to the contrary.

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(4) See section 34 of the Act on the presentation of goods to Customs on import.

(5) See section 16(3) of the Act for the definition of “transaction value”.

### **Values undetermined when Customs declaration would otherwise be accepted**

**109.**—(1) This regulation applies where, in the application of Method 1 valuation, a transaction value cannot be determined by the time the Customs declaration in respect of the goods would, if the value were determined, be accepted.

(2) A Customs declaration in respect of the goods may be made in which the value of the goods is in whole or part still to be determined, if conditions 1 to 3 are satisfied.

(3) Condition 1: the declarant must—

- (a) be authorised by HMRC for the purposes of this regulation; and
- (b) provide a draft of the intended contents of the declaration to HMRC which—
  - (i) identifies those parts of the value which cannot be determined and why;
  - (ii) sets out the basis on which the value can later be determined; and
  - (iii) states the date by which the valuation will be provided to HMRC.

(4) Condition 2: HMRC must notify the declarant—

- (a) that it is satisfied that a declaration may be so made; and
- (b) of the date by which the declaration must be made.

(5) Condition 3: the Customs declaration is made accordingly.

### **Provision of evidence**

**110.** HMRC may publish a notice specifying the type of evidence to be provided to an HMRC officer which supports—

- (a) the use of one Method instead of another; or
- (b) the determination of a valuation.

## **CHAPTER 3**

### **Transaction value: specified matters – included elements**

#### **Transaction value: included items**

**111.**—(1) The items referred to in regulation 108(7)(a) as specified matters to be included as elements of a transaction value are the following—

- (a) the container of the goods;
  - (b) the packaging of the goods;
  - (c) transport and insurance of the goods, up to the time the goods are imported into the United Kingdom;
  - (d) loading and handling of the goods, up to the time the goods are imported into the United Kingdom;
  - (e) commission, except buying commission, and brokerage fees paid by the buyer of the goods; and
  - (f) export duty charged in the place of origin.
- (2) The value of the items in paragraph (1) is—
- (a) in respect of sub-paragraphs (a) to (d), subject to paragraph (3), the cost of the item;
  - (b) in respect of sub-paragraph (e), the amount of the commission and fees paid; and
  - (c) in respect of sub-paragraph (f), the amount of the duty.

(3) Where goods are transported by air, the cost of the air transport is the percentage of that cost as set out in the document, “Air Transport Costs to be included in the customs value, version 1, dated 27 November 2018(6)”.

### **Transaction value: further included items – partial value**

**112.**—(1) The items referred to in regulation 108(7)(a) as specified matters to be included as elements of a transaction value further include the following, where the buyer of the goods provides them to the seller other than for full valuable consideration—

- (a) materials, components or parts of the goods;
- (b) materials consumed in the production of the goods;
- (c) dies, moulds or tools used in the production of the goods; and
- (d) each item listed in paragraph (2) which is provided outside of the United Kingdom in relation to the production or development of the goods.

(2) The items referred to in paragraph (1)(d) are—

- (a) artwork;
- (b) designs;
- (c) development services;
- (d) engineering work or services; and
- (e) plans or drawings.

(3) Paragraph (1)(d) applies to an item even if it is not intended to be used by the buyer in the processing, use or disposal of the goods.

(4) Subject to paragraphs (5) and (6), the value of an item in paragraph (1) is—

- (a) if it can be readily determined—
  - (i) where the buyer or a related person of the buyer did not produce the item, the price paid by the buyer for the item; or
  - (ii) where the buyer or a related person of the buyer produced the item, the cost to the buyer or related person of producing the item; or
- (b) otherwise, a value determined in accordance with the principles adopted by the WTO(7) in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994(8).

(5) In respect of an item to which paragraph (1)(c) or (d) applies, where the item is used or provided in relation to other goods as well as the goods to be valued, the value is to be apportioned proportionately between the other goods and the goods to be valued.

(6) The total value of the items to which paragraph (1) applies is to be reduced by the amount of the value of the consideration provided by the seller.

(6) Available from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(7) Defined in section 37(1) of the Act as “the World Trade Organisation”.

(8) Available from: [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7\\_gen\\_agreemt.pdf?db=web](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7_gen_agreemt.pdf?db=web). A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

### **Transaction value: further included items - royalties**

**113.**—(1) The items referred to in regulation 108(7)(a) as specified matters to be included as elements of a transaction value further include a royalty or licence fee payable by the buyer to the seller where—

- (a) the royalty or licence fee is payable when the buyer sells the goods; and
  - (b) such payment forms part of the agreement between the buyer and seller for the import of the goods into the United Kingdom.
- (2) The value of the royalty or licence fee is, if it can be readily determined, the amount payable.

### **Transaction value: adjusted amounts**

**114.**—(1) Where an HMRC officer is satisfied—

- (a) that a transaction value used in Method 1 valuation is substantially lower than the full value of the goods; and
- (b) as to the amount (“the adjusted amount”) which, if included in the value, would be the full value,

the officer must consider the transaction value as inaccurate and accordingly give a notification or make a correction to the Customs declaration under paragraph 14 of Schedule 1 to the Act, such that the transaction value is treated so as to include the adjusted amount.

(2) In particular, an HMRC officer must have regard to the following in order to be satisfied as to the matters in paragraph (1), namely if—

- (a) the buyer and seller of the goods have agreed any restriction on the use or disposal of the goods, other than a restriction—
  - (i) imposed further to an enactment; or
  - (ii) as to the geographic area in which the goods may be re-sold;
- (b) the seller is entitled to any of the proceeds of any disposal of the goods made by the buyer; or
- (c) the goods are to be processed by the buyer or a related person of the buyer and the seller is entitled to any of the goods as processed.

## **CHAPTER 4**

### **Transaction value: specified matters – excluded elements**

### **Transaction value: excluded items**

**115.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements from a transaction value are the following—

- (a) import duty in respect of the goods;
  - (b) buying commission in respect of the goods;
  - (c) the right to reproduce the goods in the United Kingdom;
  - (d) transport and insurance of the goods, after the time the goods are imported into the United Kingdom; and
  - (e) the assembly, construction, erection or maintenance of the goods or the provision of technical assistance in relation to the goods, to the extent such an activity applies after the time the goods are imported into the United Kingdom.
- (2) The value of an item in paragraph (1) is—

- (a) in respect of sub-paragraph (a), the amount of the import duty;
- (b) in respect of sub-paragraphs (b) to (e)—
  - (i) if it can be readily determined, the amount payable for the item by the buyer of the goods; or
  - (ii) otherwise, a value determined in accordance with the principles adopted by the WTO in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

**Transaction value: further excluded items - royalties**

**116.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements from a transaction value further include a royalty or licence fee agreed to be paid by the buyer to the seller where—

- (a) the royalty or licence fee is payable when the buyer sells the goods; and
  - (b) the agreement to pay the royalty or licence fee is a separate agreement to that entered into between the buyer and seller for the import of the goods into the United Kingdom.
- (2) The value of the royalty or licence fee is, if it can be readily determined, the amount agreed to be paid.

**Transaction value: further excluded items – finance interest**

**117.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements of a transaction value further include finance interest.

(2) “Finance interest” means the interest charged under a relevant finance agreement which is attributable to the finance used to purchase the goods.

(3) “Relevant finance agreement” means a written finance agreement between the buyer and seller of the goods entered into to enable the buyer to buy the goods and where—

- (a) the rate of interest payable under the finance agreement does not exceed that usually payable under similar agreements in the territory where the finance agreement was entered into; and
- (b) in cases where the buyer sells the goods within a period of 30 days beginning with the day after the date of their release to free-circulation, they are sold at no less than the value declared in the Customs declaration.

(4) The value of the finance interest is, if it can be readily determined, the amount of the interest.

**Transaction value: further excluded items – costs during storage and increase in value**

**118.**—(1) The items referred to in regulation 108(8) as specified matters to be excluded as elements from a transaction value further include in respect of the goods—

- (a) costs incurred for storage of the goods whilst they are held in a temporary storage facility or held in storage further to a special Customs procedure<sup>(9)</sup>; and
- (b) any increase in value which occurs after the goods are imported into the United Kingdom.

(2) Paragraph (3) applies where—

- (a) the goods are declared for a special Customs procedure and are subject to operations described in sub-paragraph (b) of paragraph 11 of Schedule 2 to the Act; and

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(9) “Special Customs procedure” is defined in section 3(4) of the Act.

- (b) costs are incurred, or any increase in value occurs, by virtue of those operations (“operations costs or increase in value”).
- (3) Operations costs or increase in value only fall within paragraph (1) if they derive from those operations specified in a notice published by HMRC as operations constituting usual forms of handling of goods.
- (4) The value is, if it can be readily determined, the amount of the costs or increase in value.

## CHAPTER 5

### Methods of valuation

#### Method 1 valuation

**119.** The general rule of valuation provided by section 16(2) of the Act is the “Method 1 valuation”.

#### Method 2 valuation

**120.**—(1) “Method 2 valuation” means the valuation of chargeable goods<sup>(10)</sup> presented to Customs on import determined by the valuation method in paragraph (2).

- (2) The valuation method is—
  - (a) identify the transaction value of identical goods sold for export to the United Kingdom within the 90 day period; and
  - (b) apply that value to the chargeable goods as the value of the goods which applies immediately before they are released for free-circulation<sup>(11)</sup>.
- (3) The identification is to be made in accordance with regulation 122.

#### Method 3 valuation

**121.**—(1) “Method 3 valuation” means the valuation of chargeable goods presented to Customs on import determined by the valuation method in paragraph (2).

- (2) The valuation method is—
  - (a) identify the transaction value of similar goods sold for export to the United Kingdom within the 90 day period; and
  - (b) apply that value to the chargeable goods as the value of the goods which applies immediately before they are released for free-circulation.
- (3) The identification is to be made in accordance with regulation 122.

#### Method 2 and Method 3 valuation: identification of transaction values

**122.**—(1) The identification of the transaction value of identical goods or similar goods sold for export to the United Kingdom within the 90 day period must be based on a sale of such goods which—

- (a) is made by the same seller as the seller of the chargeable goods or, where no such sale exists in the 90 day period, is made by a seller who is in the equivalent position in the supply chain as the seller of the chargeable goods;

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<sup>(10)</sup> “Chargeable goods” is defined in section 2 of the Act.

<sup>(11)</sup> See section 3(3)(a) of the Act on the free-circulation procedure.

- (b) is made to the same buyer as the buyer of the chargeable goods or, where no such sale exists in the 90 day period, is made to a buyer who is in an equivalent position in the supply chain as the buyer of the chargeable goods;
  - (c) is the nearest in time to the time the chargeable goods are imported; and
  - (d) is of an equivalent quantity as the sale of the chargeable goods.
- (2) If more than one such sale is identified, the sale which produces the lower or lowest valuation is the transaction value to be applied.

#### **Method 4 valuation – other than goods to which regulation 124 applies**

**123.**—(1) “Method 4 valuation” means, subject to paragraph (2), the valuation of chargeable goods presented to Customs on import which is determined by the following steps.

- (2) Paragraph (1) does not apply to goods to which regulation 124 applies.
- (3) Step 1: identify whether or not there is a sale of the chargeable goods which occurs within the period of 90 days which begins immediately after the date on which the chargeable goods are imported into the United Kingdom and proceed to step 2.
- (4) Step 2: if—
  - (a) there is a sale, proceed to step 3; or
  - (b) there is no sale and—
    - (i) step 7 has not already been applied, proceed to step 7;
    - (ii) step 7 has been applied, proceed to step 8, unless step 8 has already been applied;
    - (iii) step 8 has already been applied, cease to use Method 4 valuation.
- (5) Step 3: identify the earliest sale and exclude any sale where the buyer and seller of the goods are related persons and—
  - (a) if that leaves no sale, repeat step 2, beginning at paragraph (b); or
  - (b) otherwise, proceed to step 4.
- (6) Step 4: exclude any sale where the quantity sold is insufficient to give a representative quantity in order to determine a unit price and—
  - (a) if that leaves no sale, repeat step 2, beginning at paragraph (b); or
  - (b) otherwise, proceed to step 5.
- (7) Step 5: include and exclude, as the case may be, as elements of the sale such of the specified matters which are not already taken into account as elements of the sale and proceed to step 6.
- (8) Step 6: use the total sale value obtained by step 5 to determine the unit price of the goods and apply that unit price to all of the chargeable goods as the value of the goods which applies immediately before they are released for free-circulation.
- (9) Step 7: repeat step 1 but as if the reference to “chargeable goods” were instead a reference to “similar goods which have not been processed”.
- (10) Step 8: repeat step 1 but as if the reference to “chargeable goods” were instead a reference to “similar goods which have been processed” but only if the amount of the value of the processing carried out to the goods can be determined.
- (11) Where step 5 applies after the application of step 8, the amount of the value of the processing carried out to the goods is to be deducted in identifying the unit price of the sold goods.



#### **Method 4 valuation – fresh fruit and vegetables**

**124.**—(1) This regulation applies to chargeable goods presented to Customs on import which are fresh fruit and vegetables meeting the description and with the commodity codes set out in the document, “Fresh fruit and vegetables under Method 4 valuation, version 1, dated 27 November 2018(12)”.

(2) The valuation of the goods is to be determined by reference to the wholesale price of the goods at the date of import, being the price as set out in a notice published by HMRC.

(3) The notice must set out the wholesale price as a unit price for 100 kg of the goods and the period to which the price applies.

(4) For the purposes of setting out wholesale prices in the notice, regard must be taken of wholesale prices from a representative sample of wholesale markets operating in the United Kingdom and the prices set out in the notice must be kept up to date.

#### **Method 5 valuation**

**125.**—(1) “Method 5 valuation” means the valuation of chargeable goods presented to Customs on import which is determined by the valuation method in paragraph (2).

(2) The valuation method is—

(a) identify—

- (i) the cost of producing the goods and the cost of the container and packaging of the goods;
- (ii) the costs of transport and insurance of the goods, up to the time the goods are imported into the United Kingdom;
- (iii) loading and handling charges of the goods, up to the time the goods are imported into the United Kingdom;
- (iv) the amount of expenses usually incurred in enabling comparable goods to be sold in the place of export of the goods; and
- (v) the amount of profit usually arising on a sale of comparable goods in the place of export of the goods;

(b) total the costs, charges and amounts in sub-paragraph (a); and

(c) apply that total as the value of the chargeable goods which applies immediately before they are released for free-circulation.

(3) The cost of producing the goods must include the cost of each item listed in paragraph (4) which is provided outside of the United Kingdom in relation to the production or development of the goods, if the cost of the item is charged to the buyer.

(4) The items referred to are—

- (a) artwork;
- (b) designs;
- (c) development services;
- (d) engineering work or services; and
- (e) plans or drawings.

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(12) Available from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(5) Paragraph (3) applies to an item even if it is not intended to be used by the buyer in the processing, use or disposal of the goods.

(6) Where goods are transported by air, the cost of the air transport is the percentage of that cost as set out in the document, “Air Transport Costs to be included in the customs value, version 1, dated 27 November 2018(13)”.

### **Method 6 valuation**

**126.** “Method 6 valuation” means the valuation of chargeable goods presented to Customs on import which is the value determined by applying—

- (a) such of the elements of valuation used in any other method of valuation in this chapter; and
- (b) the principles for the valuation of goods adopted by the WTO in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994(14),

as are reasonable to apply in order to determine the value of the chargeable goods immediately before they are released for free-circulation.

## **CHAPTER 6**

### **Comparable, identical and similar goods and related persons**

#### **Comparable, identical and similar goods**

**127.—**(1) In this Part—

“comparable goods” means—

- (a) goods which are identical to the chargeable goods presented to Customs on import; or
- (b) where there are no such identical goods, similar goods;

“identical goods” means those goods which are—

- (a) identical in all relevant characteristics to the chargeable goods presented to Customs on import; and
- (b) produced in the same territory as those chargeable goods;

“similar goods” means goods which in comparison with the chargeable goods presented to Customs on import—

- (a) have similar characteristics and contain similar materials; and
- (b) perform the same or a similar function and are regarded as commercially interchangeable.

(2) HMRC may publish a notice specifying—

- (a) generally or in relation to particular goods the matters to be taken into account in determining whether or not goods are similar to each other; or
- (b) those goods which are similar to other goods.

#### **Related persons**

**128.—**(1) Persons A and B are related persons for the purposes of this Part in the following cases—

(13) Available from: <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>. A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

(14) Available from: [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7\\_gen\\_agreement.pdf?db=web](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/valuation/instruments-and-tools/gatt/arti7_gen_agreement.pdf?db=web). A hard copy is available for inspection free of charge at the offices of HMRC at 100 Parliament Street, London, SW1A 2BQ.

- (a) where B is a body corporate, A is an officer of B;
  - (b) A and B are partners in the same business;
  - (c) A is an employee of B;
  - (d) the same person controls a business carried on by A and a business carried on by B;
  - (e) A controls a business carried on by B;
  - (f) A and B jointly control the business of another person; or
  - (g) A is a member of the same family as B.
- (2) For the purposes of paragraph (1)—
- (a) a person controls a business carried on by another person where the latter is accustomed to conduct the business in accordance with the directions of the former;
  - (b) a person also controls a business carried on by another person where the control is exercised through a third person who acts on that person's direction;
  - (c) where a business is carried on by a company, a person controls that business where that person holds 5% or more of the voting rights in the company; and
  - (d) a business referred to is not limited to a business involved in the importation of the chargeable goods presented to Customs.
- (3) In paragraph (1)(g), "A is a member of the same family as B" where a relationship exists directly or indirectly between A and B which arises through blood, adoption, marriage, civil partnership or co-habitation.
- (4) HMRC must publish a notice as to the relationships HMRC consider fall within paragraph (3).