



# Transfer Pricing Forum

Transfer Pricing for the International Practitioner

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# Switzerland

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## Introduction

Switzerland levies specific customs duties – that is, duties based on the quantity, weight, or volume of goods (as a standard, a specific duty rate applies per 100-kilogram gross weight), instead of on the value of the goods (ad valorem). This is a key distinction from many other jurisdictions, where ad valorem duties (a percentage of the customs value) are common.

In the customs declaration, the declarant must indicate the goods' value with the statistical value for empirical purposes, and the VAT value for the purposes of levying import VAT.

On January 1, 2024, Switzerland abolished all tariffs (customs duties) on industrial goods, i.e., goods that are classified in Chapters 25-97 of the Harmonized System.

### **1. In your jurisdiction, how do the tax and customs departments interact? Are they operating separately or collaborating, especially considering their potentially conflicting interests (e.g., higher import prices leading to higher import duties but lower local profits)?**

In Switzerland, the tax and customs authorities operate as distinct departments with separate mandates and objectives. The Swiss Federal Tax Administration (SFTA) is, for example, responsible for direct federal taxes, domestic VAT, and transfer pricing matters. Meanwhile, the Federal Office for Customs and Border Security (FOCBS) handles customs duties and import VAT.

Regarding collaboration, both authorities have the power to request data/information and exchange taxpayers' data, within the scope of their legally defined mandates. For example, the SFTA can request the import customs data of a company as part of an audit related to the company's VAT declaration. However, in-depth collaboration between the departments (e.g., conducting joint audits) is not the norm.

Nevertheless, as lowering transfer prices does not result in a decrease in customs duties, it is usually not considered a conflict of interest between the SFTA and the FOCBS.

**2. Please explain the interaction between transfer pricing methods (e.g., as outlined in the OECD Transfer Pricing Guidelines) and customs valuation methods (e.g., as described in the WTO Valuation Agreement) in your jurisdiction.**

As Switzerland levies specific customs duties, it does not apply the concept of a customs valuation and hence does not provide dedicated stipulations for the purpose of levying customs duties.

However, as an assessment basis for the import VAT, the VAT value attributed to transactions with closely related persons, or persons closely associated with them, is the value that would be agreed upon between independent third parties. Provided that the declared transfer price is in line with transfer pricing regulations, the price can be used as basis for the VAT value.

**3. From a supply chain perspective, MNEs may consider implementing restructuring strategies to mitigate the impact of higher customs duties. Transfer pricing strategies employed by MNEs may include lowering operating margin levels for limited risk distributors, or converting contract manufacturers into toll manufacturers, for example.**

**How would general anti-abuse provisions in your jurisdiction address such strategies, assuming the behavior of parties aligns with economic reality and the new or modified contractual agreements?**

To the extent that the declared import value reflects economic reality and is in line with the regulations, the FOCBS generally respects the arrangement. The Swiss Customs legislation does not provide for anti-abuse provisions.

However, Switzerland applies the principle of “good faith” in handling the “abuse of law” (*Rechtsmissbrauch*), as provided in Article 2 of the Civil Code. An abuse of law is defined as the exercise of a formally existing right for the sole purpose of harming another person, or when such exercise contradicts the principle of good faith. This means that a judge will not protect a right if it is manifestly being exercised abusively.

**4. How are customs authorities in your jurisdiction responding to transfer pricing year-end adjustments? What are the specific requirements and procedures for decreasing customs duties following a year-end adjustment?**

Year-end adjustments can be handled in a quite straightforward manner with the FOCBS. As mentioned, these adjustments do not result in higher or lower customs duties. However, they affect the import VAT.

A correction of the tax assessment decision and reimbursement of the import VAT is only possible if:

- (a) the request is within the objection deadline (five years after the end of the calendar year in which the tax assessment decision was issued);

- (b) the import VAT cannot be fully deducted as input VAT; and
- (c) the corresponding proofs are submitted.

Given that a company can deduct the import VAT in full as input tax, the FOCBS will not adapt the tax assessment decision to the lower price. On the other hand, an increase in the transfer price must only be disclosed within 30 days after the adjustment to the FOCBS if the import VAT cannot be deducted as input tax in full.

## Contributors

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