ITEM 5

QUESTIONS ON THE ITEM 5 TIP SHEET

Q - If a component is made abroad and then transferred to US to be incorporated into a product the client sells in the US, what do you do? What if a product is made outside the US by a company but only sold in the US to the company (and not resold to a third party). (And what if re-sold to a third party in the US by the company?).

A - If a component is made abroad and then transferred to US to be incorporated into a product the client sells in the US, you would only report the sale of the final product. How is your second question different from the first? The only example I can think of if it is not resold to a third party is that it is being incorporated into a product made by the US company. If the product is manufactured outside of the US and resold to a third party, you only report the manufacturing code (no double counting).

Q - Is the above different from what is in the first bullet under products manufactured outside of the US in the tip sheet?

A - No. It's the same.

Q - On the first bullet, if a component is manufactured by a company within a "person" overseas and then transferred (I'm not sure what "sale" means in the bullet) to another entity within the person in the US to be incorporated into a larger product, you don't report transfer price, you just report the revenues for the sale of the larger product? (When would you report transfer price?)

A - Correct. And you would report transfer price if it were a finished product mfd overseas and then transferred to another entity within the person for sale in the US. It says "sale" because our understanding is that often companies actually sell the product internally - at a transfer price - and then the second entity sells it to a purchaser.

Q - In the first bullet, regarding the transfer price, if you transfer to another entity within the person in the US and then that entity sells the product unchanged, you double count? Ie, put in the transfer price and the sale price? (I had thought we were to not double count).

A - No, no more double counting. You report, at the 10 digit level, the transfer price.

Q - An entity manufactures a finished product outside the US, and the finished product is transferred to a sister entity in the US, which sells it. Do you report only in a manufacturing code based on transfer price; or do you report revenue in a manufacturing code based on a transfer price AND also report the sales revenue in a wholesale code?

A - You only report in the manufacturing code, based on transfer price

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Q - I could use some clarification on the last two bullets in that section of the tip sheet.

A - The next-to-last bullet is making the point that even if title passes outside the US, you report sales in the US if you (or a person within you, i.e., a foreign sub) bring the product into the US for sale. If you sell mfd product to a third party outside the US, you do not report those sales in item 5 because you cannot be expected to track sales by someone else.

The last bullet is making the point that if you have a product contract manufactured you're still not a mfr, just like you weren't in item 5 before the changes. If you are not a mfr because you had your product mfd by a third party, then you only report US sales of the product if the sales are made from your US retail/wholesale establishment, under a six digit code.

Q - On the next to last bullet, I was a bit confused by the last few words "or to a US customer of the filer." What if a product is manufactured overseas and the manufacturer negotiates a deal with a US customer. But the product actually first transfers to a trading company outside of the US (title and risk of loss) and then the trading company exports it from that country to the US customer of the manufacturer (I believe this happens with some Asian companies). How is that treated?

A - That is a sale by the mfr to a US customer, even if someone else does the schlepping. Report using 10-digits at the price it is sold to the customer. Don't get hung up on title and risk of loss, because what we want to capture is mfd product that the mfr causes to be sold in the US, as opposed to a situation where the mfr sells to a wholesaler/retailer third party outside the US and has no reason to know where the product goes after that.

Q - The question I had above about the next to last bullet: I understand what you say about my hypothetical with a trading company. Additionally I have clients wondering what else this covers -- i.e., when would you have a foreign to foreign sale (presumably from the filer to a non-affiliated person), with title passing, but the sale into the US then is made by an entity within the filer. Can you give us an example of what situation that may be?

A - I think your hypothetical with the trading company is the more likely situation, but I think you could also have a sale by a foreign manufacturer to a controlled entity outside the US that then sells into the US. I would have thought that a manufacturer wouldn't pass title to a sub, but we are told this does happen. The difference between this scenario and your hypo with the trading company, is that the price is reported at transfer here, while it is reported at the customer's purchase price in your hypo.