

Verne, B. Michael

Item 5

From: [REDACTED]  
Sent: Thursday, July 26, 2012 10:43 AM  
To: Walsh, Kathryn; Verne, B. Michael  
Subject: Questions Regarding Item 5

Dear Kate or Mike,

I would like to confirm with you the proper method of handling Item 5 revenue reporting for an HSR notification I'm working on for a foreign client (the acquiring person). Here are the relevant facts:

- UPE is a foreign company, with factories abroad. It has a U.S. sub (controlled entity) that manufactures and sells finished product to third parties. The foreign entity also sells some finished product direct to third-party customers in the U.S.
- U.S. sub assembles some products using components manufactured by the parent abroad and sells the finished product in the U.S.
- U.S. sub also sells some product completely manufactured by the parent abroad.
- U.S. sub also sells some product purchased from third parties.
- U.S. sub also derives some revenue from the sale of spare parts for repair. In some cases, these parts are provided under warranty free of cost to the consumer, but in the majority of the cases, the original product is out of warranty and therefore the consumer pays for repair parts.

Here are the rules we would like to confirm:

1. For finished products manufactured by the acquiring person abroad and sold to a controlled subsidiary in the U.S., which sells the products to third-party customers, we use the 10-digit manufacturing code, but use the transfer price if necessary. We do not count the revenue derived from the subsequent sale by the U.S. sub. ✓
2. For components which are manufactured by the acquiring person abroad and sold to a controlled subsidiary in the U.S. (which will use those components for manufacturing into the finished product, and which will then sell its finished products to third-party customers), we do not count the revenue from the components manufactured abroad, because this is not finished product. ✓
  - a. For spare parts manufactured abroad and sold to the U.S. sub, intended to be sold without any change to end-users (these are used in repair), this would be considered a finished product and counted as revenue as in #1. ✓
  - b. For spare parts manufactured abroad and sold to the U.S. sub, if the reporting person cannot distinguish between spare parts meant for onward sale and those meant to be included in manufacturing, should we count these as in #1, as it is better to be slightly over-inclusive than under-inclusive? (These numbers are not large.) YES
  - c. For spare parts manufactured abroad, intended for onward sale as repair parts by U.S. sub to consumers, where we cannot distinguish whether these products are provided under warranty (free of cost to the consumer) or paid for, should we include the transfer price of those components? YES
3. For finished products manufactured abroad and sold direct to third-party customers, we use the 6-digit wholesale code. NO - USE 10-DIGIT
4. For products which the U.S. sub purchases from third parties, we use the 6-digit wholesale code. ✓

Thanks for your help with this.

Best regards,

BM  
7/26/12