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**VALUATION OF GOODS IMPORTED AS HIRED GOODS BUT ARE  
EVENTUALLY SOLD TO THE LESSEE: by Lameck Tatswareyi**



In my working life as a customs officer, I have had to discuss and even argue with colleagues on the valuation of hired goods which are eventually sold to the lessee.

The following scenario sets the stage for understanding the matter:

Lessor L in country A leases mining equipment to a Lessee LS in country B. The equipment is valued at \$5m and the cost of hiring it for the temporary period of twelve months is \$2.5m. At the end or just before the end of the leasing period, the importer approaches the Customs administration with a request for assistance. The story is that it is no longer economically viable to return the machine to the Lessor and an agreement has been reached for the Lessee to buy the machine at a price of \$1.5m. The customs officers would reject the value of \$1.5m and determine the value of the machine by deducting the hire price from the declared value of the machine at the time of importation thus: \$5m - \$2.5 which would put the value at \$2.5m.

In some administrations, this practice has taken root and the importers are no longer required to produce invoices or if they produce the invoices, they would be disregarded and the method explained above used to arrive at the transaction value of the equipment.

Let us discuss this aspect of valuation under the WTO Customs Valuation agreement. At the time of importation, when the value of the machine was declared at \$5m, we need to ask ourselves whether there was a transaction i.e. if the goods were sold for export to the importing country. In this case the answer is no because what was sold were the services offered via the machine and not the equipment itself. There was an invoice for hiring and not for the machine so \$5m is not and cannot be the transaction value of the good.

We now have to look at the second deal where the Lessee buys the machine from the Lessor. Some valuation practitioners would ask themselves the following questions: Was there a sale? Their answer is Yes. Was the sale for export to the Importing country? Here, diversity brews up with many saying no because the goods were already physically in the importing country at the alleged time of sale so Transaction Value Primary method is thrown out.

The interesting observation I have made is that at the end of the discourse all converge on using the declared value at time of importation minus hire value method.

The way I see it is as follows: At the time of importation, there was no transaction since the good was not sold for export to the importing country therefore, \$5m cannot be taken as the Customs value of the good at any time when its customs value is to be determined.

If at the expiry of the hire period, the item is sold to the Lessee, then that becomes a sale for export to the importing country even if the good is already physically in that country. The location of the sale and good is immaterial, what is important is that a sale

must have taken place and that sale must have been for export of the good to the importing country. Whosoever wants to reject the sale value has to follow the protocol of rejecting a transaction value to the letter e.g. they have to prove that there was a relationship as envisaged in the agreement and which relationship affected the price actually paid or payable and if the Transaction Value still remains unacceptable, you cannot go to declared value at importation but rather go the alternative methods of valuation. This means that the sale price when the equipment was already in the country of importation is acceptable as the Transaction Value and is acceptable provided all conditions of the Transaction Value Primary method are met.

Time permitting, next time, I will discuss the shortcomings in some Customs administrations systems which do not allow for the proper use of alternative methods of valuation as espoused under the WTO agreement.

### **About the author**



Lameck Tatswareyi is a WCO accredited customs valuation trainer and SADC rules of origin certified trainer. He has more than 36 years' experience in the field of customs and excise management. He holds a bachelor of honours degree in Fiscal Studies from the National University of Science & Technology, Zimbabwe and a Master of public sector management, public management and administration from Africa University, Zimbabwe. He writes in his personal capacity.

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