

Australian Customs Notice 2000 30

FREE INTO STORE TRANSACTIONS (DDP/DDU)

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The purpose of this notice is to clarify, for free into store transactions, who may be the owner of imported goods for Customs entry purposes. The notice also outlines owners responsibilities under the various sections of the *Customs Act 1901* (Customs Act), and who is the importer for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Background

The Customs Act requires the **owner** of goods to enter them and pay Customs duty if applicable. The GST Act requires the **importer** to pay GST payable on a taxable importation (sections 13-15 and 33-15) and entitles that **importer** to an input tax credit if the importations of the goods are creditable importations (section 15-15).

There are a number of trading arrangements where the overseas supplier of goods undertakes to import them into Australia and deliver them to the premises of the Australian purchaser. These transactions are sometimes referred to as Free into Store (FIS) contracts and Landed into Store (LIS) contracts.

The correct commercial terminology is contained in the publication "Incoterms", published by the International Chamber of Commerce (ICC). An FIS transaction is given the Incoterm Delivered Duty Paid (DDP), and an LIS contract has the Incoterm Delivered Duty Unpaid (DDU).

DDP denotes the seller's **MAXIMUM** obligation. The term means that the seller undertakes to deliver the goods right to the buyer's nominated premises in the country of importation.

The SELLER is responsible for:

- Putting the contract goods at the disposal of the buyer, duty paid
 - *at the named place of destination*
 - *on the date or within the period stipulated, and*
 - *supplying all necessary documents to enable the purchaser to take delivery of the goods.*

The BUYER is responsible for accepting the goods at the named place of destination and for paying for them.

DDU is similar to DDP except that the buyer must pay, where applicable, the costs of customs formalities as well as all duties, taxes and other charges payable upon import of the goods. The industry does not make consistent use of these terms. Some parties use the DDP term even when the goods are duty free or duty free under a concession, while others choose to use DDU for this purpose.

Some difficulties arise with DDP/DDU transactions in determining who is the owner of imported goods for the purposes of the various provisions of the Customs Act:

- Penalty provisions, section 243T
- Retention of documents, section 240
- Duty shortpaid or erroneously refunded, section 165

Owner for Customs entry purposes

In a Delivered Duty Paid (DDP) contract, where there is a Customs duty liability, the overseas supplier is responsible for acquittal of that liability and will be regarded as the owner for Customs entry purposes and the importer for the purposes of the GST Act.

In a Delivered Duty Unpaid (DDU) contract where the goods are duty free (either substantively or under a concession), or where parties are using the Incoterm DDP for goods that are duty free, either party can enter the goods for home consumption and thus take responsibility for Customs clearance and acquittal of the GST. Whichever party takes this responsibility will be regarded as the owner for Customs entry purposes and the importer for the purposes of the GST Act.

In all cases the Customs Broker must be authorised by the owner of the goods, the entity named as owner on the Customs entry, to enter the goods on their behalf.

Implications for owners

Owner's responsibility for section 243T penalty

Customs will treat the entity shown as owner on the customs entry as the entity liable to pay any penalty which may be imposed pursuant to Customs Act section 243T.

NOTE: Subsection 243T(1) excludes the owner's agent from any penalty liability. For the purposes of other provisions of the Act, Customs brokers and agents are reminded of Part XI of the Act principally, sections 181, 182 and 183 when entering goods on behalf of the owner of such goods.

Section 240 - Owner's responsibility to retain commercial documents

Generally, the entity shown as owner on the customs entry is liable to retain all relevant commercial documents (originals or certified copies) for the period specified in section 240. It is not practical, however, to require the overseas supplier to retain these documents. In these cases, therefore, the broader definition of owner in section 4 and the provisions of section 183 are considered sufficient to require the owner's agent in Australia (ie overseas supplier's agent) to retain all relevant commercial documents (originals or certified copies) for the period specified in section 240.

Section 165 - Owner responsible to pay duty short paid or erroneously refunded

Where post entry action is necessary, the owner shown on the entry is the person on whom any section 165 demand will be made. Should this person deny liability as not being the legitimate owner (ie not having legal title to the goods and not having held themselves out to be the owner in terms of Customs Act section 4), the owner's agent is considered, for the purposes of Customs Act sections 4, 165 and 183(1), to be the person on whom the demand should be made.

Securities for end-use concessional entry

In a DDP transaction, an overseas supplier cannot give a security for compliance with end-use conditions for any "under security" concessional entry of goods. The recipient, however, can do so. In this case, the recipient must also accept liability to pay the GST payable on the taxable importation and must be shown as the owner on the entry. This is, effectively, a Delivered Duty Unpaid contract (although the supplier may still retain a liability to pay for any customs clearance services - eg customs broker's charges).

Overseas suppliers registering for GST

An overseas supplier that pays GST to Customs on a taxable importation will be entitled to an input tax credit if the importation was a creditable importation (GST Act section 15-15). This supplier will need to obtain an Australian Business Number and get registered for GST in order to claim this input tax credit.

Entities that are interested in registering for GST can contact the Australian Taxation Office's *Business Tax Info Line* on 13 24 78.

Allocation of Owner Codes to overseas suppliers

Owner codes can be allocated to an overseas seller. The Coded Owner Supplier (COS) system requires, however, an Australian address. Where this is unavailable, the address may be shown as "care of *the overseas entity's agent*".

If the overseas entity has an ABN, this must be linked to the owner code (see [ACN 2000/13](#)).

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for
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