



AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2014/50

Delivered Duty Paid (DDP) Transactions

As foreshadowed in Australian Customs and Border Protection Notice No. 2014/43, this Notice provides general guidance on delivered duty paid (DDP) transactions for the purposes of the *Customs Act 1901* (Customs Act) and the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Background

(i) DDP transaction

The International Chamber of Commerce's *Incoterms 2010* describes a DDP transaction as a transaction where:

... the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

This means that in a DDP transaction the overseas supplier undertakes to deliver the goods to the premises specified in the contract of sale and to incur all costs in doing so. The overseas supplier's contractual responsibilities include carrying out all customs formalities and acquitting any liability for customs duty and goods and services tax (GST).

The abovementioned responsibilities of an overseas supplier in a DDP transaction should be reflected in the contract of sale between the Australian buyer and the overseas supplier.

(ii) Customs Act

Section 68 of the Customs Act requires goods that are imported into Australia to be entered for home consumption or for warehousing by the owner of the goods.

Section 4 of the Customs Act defines "owner" in relation to goods as:

... any person (other than an officer of Customs) being or holding himself or herself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

In a DDP transaction, both the overseas seller/supplier and the Australian purchaser/consignee are "the owner". Either could enter the goods for home

consumption under the Customs Act. However, in a DDP transaction it will usually be the overseas supplier that does.

(iii) GST Act

Under the GST Act, GST is payable on an importation of goods into Australia where the importation is a taxable importation (section 33-15).

Taxable Importation

An entity makes a taxable importation if goods are imported and the entity enters the goods for home consumption, and the importation is not a non-taxable importation (section 13-5).

The entity that imports the goods may not always be the entity that enters the goods for home consumption. The entity that enters the goods for home consumption is the entity that makes the taxable importation.

The entity that makes a taxable importation must pay any GST payable on that taxable importation (section 13-15).

In the case of a DDP transaction, the overseas supplier is the entity that makes the taxable importation and is liable for any GST payable on that taxable importation.

Creditable Importations and Input Tax Credits

Input tax credits are available for creditable importations (section 15-15).

Under section 15-5, an importation is a creditable importation if:

- (a) the entity imports the goods solely or partly for a creditable purpose;
- (b) the importation is a taxable importation; and
- (c) the entity is registered, or required to be registered.

Importantly, for the purposes of Division 15, the entity that imports the goods is the entity that:

- (a) causes the goods to be brought to Australia for application to its own purposes after importation, whether by way of supply, use, or otherwise; and
- (b) completes the customs formalities for the entry of the goods for home consumption

There can be only one entity that imports the goods within the meaning of Division 15¹.

In the case of a DDP transaction, the overseas supplier makes the creditable importation and may be entitled to an input tax credit on GST paid on the taxable importation. The overseas supplier will need to be registered for GST in order to claim an input tax credit. For information on input tax credits, contact the Australian Taxation Office at www.ato.gov.au.

1. Where one entity causes the goods to be brought to Australia and another entity makes the taxable importation, neither entity is entitled to claim an input tax credit.

Implications for Customs Act

In a DDP transaction, the overseas supplier may be named as the importer on the import declaration, particularly if it is the overseas supplier that is organising the clearance and paying the import taxes and charges.

The information contained in the import declaration should reflect the contract of sale between the Australian buyer and the overseas supplier.

(ii) Retention of commercial documents

A person who is the owner of the goods imported into Australia, and any person who causes goods to be imported into Australia, or receives goods that are imported into Australia, is obliged to retain all relevant commercial documents (originals or certified copies) for a five year period as specified in section 240 of the Customs Act. In a DDP transaction, these obligations apply to both the overseas supplier and the Australian buyer. Both parties must keep commercial documents for five years.

Under section 4 of the Customs Act, an agent is also “the owner”. Therefore, any customs broker who makes an entry on behalf of any party is an “owner” for the purposes of section 240(1) of the Customs Act. Under section 240(1B), any person who causes goods to be imported into Australia, or receives goods that have been imported into Australia, must retain commercial documents. That subsection would apply to the Australian buyer and to any express carrier who physically imports the goods and/or makes a self-assessed clearance (SAC) on behalf of one of the commercial parties.

In summary, both the parties to a DDP transaction, and any broker or carrier that makes an entry or a SAC to the Australian Customs and Border Protection Service (ACBPS) in relation to that transaction must retain commercial documents for five years. It is an offence to not retain commercial documents as required by section 240.

In a DDP transaction, the ACBPS may seek commercial documentation from: the overseas supplier, the Australian buyer, and/or any customs broker or carrier that lodged an entry or a SAC with the ACBPS in relation to that transaction. It is an offence to fail to produce commercial documents to an authorised officer when required to do so.

(iii) Penalty

Any person who makes, or causes to be made, a statement to a Customs officer that is false or misleading in a material particular, or omits, or causes to be omitted, from a statement any matter or thing without which the statement is false or misleading in a material particular, will commit an offence under section 243T or section 243U of the Customs Act. Those offences are not limited to the commercial parties in an importation or to statements made in import declarations. They are applicable to anyone who makes a statement to a Customs officer.

(iv) Duty short paid

In a DDP transaction, the overseas supplier is contractually responsible for carrying out all customs formalities and for paying any customs duty and GST.

Under section 165 of the Customs Act, the ACBPS may make a demand for payment of short-paid duty against any person who is “the owner” of the goods. Given the broad definition of owner in section 4 of the Customs Act, in the case of a DDP transaction the ACBPS is not limited to issuing a demand for payment on the

overseas supplier; the ACBPS could, for example, issue a demand for payment on the Australian buyer of the goods.

ACBPS has statutory responsibilities to pursue the recovery of debts, unless it is uneconomical to do so. It is often very difficult and uneconomical to recover debts from overseas suppliers. It is therefore likely that where duty has been short-paid or entirely evaded by an overseas supplier in a DDP transaction, the ACBPS will seek to recover the duty by issuing a demand against the Australian buyer of the goods.

That possibility should, therefore, be taken into account by any Australian buyer before entering into a DDP transaction.

Enquiries concerning this Notice may be directed to the Director, Border Control and Clearance Framework Section, on telephone number (02) 6275 8042.

[signed]

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CANBERRA ACT

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