



PS LA 2016/1 - Transfer pricing adjustments with potential customs implications

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PS LA 2016/1

Transfer pricing adjustments with potential customs implications

This Law Administration Practice Statement provides guidance to staff when they are proposing transfer pricing adjustments involving imported purchases with potential customs implications.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What is this practice statement about?

This practice statement provides guidance to ATO staff when making transfer pricing adjustments under Subdivision 815-B of the *Income Tax Assessment Act 1997* (ITAA 1997) in respect of an entity's purchases of imported goods upon which customs duty has been levied.

2. When might the ATO make such adjustments?

The type of adjustments specified within section 1 of this practice statement may have been made in an audit, a settlement, where the entity has objected to an amended assessment or as part of an Advance Pricing Arrangement (APA) or Mutual Agreement Procedure (MAP).

3. What can concern the entity when the ATO makes these adjustments?

Where an entity gets a transfer pricing benefit and you adjust the entity's amount of taxable income, or loss of a particular sort, but do not attribute it to the individual components of the purchases relating to the value of the imported goods, the entity can experience difficulties in obtaining refunds of customs duty or determining additional duty liabilities.

In order to satisfy their responsibilities under the *Customs Act 1901*, an entity may request assistance from the ATO to the extent the adjustments relate to imported goods.

4. What is the context surrounding this practice statement?

Subdivision 815-B of the ITAA 1997 does not contain any express requirement for the Commissioner to specify the amount of individual amounts that make up the transfer pricing benefit when making transfer pricing adjustments. For example, for present purposes, the Commissioner does not need to attribute adjustments made to an entity's taxable income to individual component(s) of the purchases that have been subject to customs duty. This is because the amount of an entity's taxable income is worked out on the basis that the arm's length conditions operated.

However, paragraph 3.17 of the Explanatory Memorandum to Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013 (Explanatory Memorandum) states that the arm's length conditions must be attributed to the value of individual components that form part of the tax equation even if a profit based method is used.

To the extent possible, this practice statement is consistent with paragraph 3.17 of the Explanatory Memorandum so as to best facilitate an entity obtaining resultant refund(s) of customs duty or determining additional duty liabilities and to alleviate the concern referred to in section 3 of this practice statement.

5. When might an entity seek assistance?

An entity may request assistance from you in determining any revised amount of customs value or duty. Such a request can be made during or after the processes mentioned in section 2.

For example, you might receive a request for assistance after the determination of an objection if the imported purchase amounts have been adjusted downwards at the objection stage.

6. What information do you need to obtain when an entity seeks assistance from you?

When you get such a request, you are to confirm that you have sufficient and appropriate documentation for you to identify the component of the transfer pricing benefit relating to the imported purchases, or request further information where necessary.

7. What additional information can you provide to assist the entity?

You are to populate an adjustment table in an audit position paper or in a revised adjustment table which is consistent with the agreed terms of a settlement, objection decision, APA or MAP outcome.

To the extent possible and for each income year that is the subject of an adjustment, you should include the following amounts in the abovementioned adjustment table:

- the cross border purchases as returned
- the cross border purchases as amended (or after adjustment at objection stage)
- the cross border purchases as amended upon which customs duty has been levied.

This additional information will normally attribute the adjustment to the appropriate cross border dealings.

If you have attributed the amount of the transfer pricing benefit across all of the cross border dealings, for example by using a general economic allocation key, you are to prepare a note to accompany the adjustment table.

You should indicate in the note that the table is:

- prepared solely to assist the entity in informing the Australian Border Force (ABF) as to the arm's length value of the goods, and
- not an aid to determine any liability under Subdivision 815-B.

Such a note would be appropriate in instances where, for example, a profit method has been applied in making an adjustment to taxable income. An example of the general economic allocation key mentioned above is the percentage share of the original total dollar value of the cross border dealings to be adjusted.

If the entity has not provided the evidence to enable you to determine the component of the purchases of imported goods that have been subject to customs duty, then the adjustment table is to reflect the imported purchases in total.

8. Do you need to contact ABF when making transfer pricing adjustments?

You do not need to contact ABF. Seeking a customs duty refund from, or reporting additional duty liabilities to ABF, is a matter for the entity alone. Once you have provided the information specified in section 7 of this practice statement, the entity can approach ABF with relevant documentation, including any adjustment table.¹

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¹ Further information is available via the Department of Immigration and Border Protection website at www.border.gov.au for the refund of and/or payment of additional customs import duties. Voluntary disclosure provisions exist under sections 243T and 243U of the *Customs Act 1901* to avoid application of infringement penalties. Queries regarding requests for voluntary disclosures can be directed to vdi@border.gov.au.

Amendment history

Date of amendment	Part	Comment
14 April 2016	All	First published.

References

Legislative references	ITAA 1997 ITAA 1997 Subdiv 815-B Customs Act 1901 Customs Act 1901 243T Customs Act 1901 243U
Other references	Explanatory Memorandum to Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as at 16 August 2010
File references	1-7IB1F6O
Related public rulings	Law Administration Practice Statement PS LA 2015/4 <i>Advance Pricing Arrangements</i> Taxation Ruling TR 2000/16 <i>Income tax: international transfer pricing transfer pricing and profit reallocation adjustments, relief from double taxation and the Mutual Agreement Procedure</i> Taxation Ruling TR 2014/8 <i>Income tax: transfer pricing record keeping and Subdivision 284-E</i>
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