



## **AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE PRACTICE STATEMENT**

**FILE NO:** 2008/016306-01

**PRACTICE STATEMENT No: PS2009/21**  
**PUBLISHED DATE: 13 JULY 2009**  
**AVAILABILITY:** Internal and external

**SUBJECT:** Applying for a Valuation Advice relating to Transfer Pricing

**PURPOSE:** To ensure industry understands Customs and Border Protection's valuation legislative requirements and related policies for the purpose of applying for transfer pricing valuation advice.

**APPROVING OFFICER:** National Director Trade

**CATEGORY:** Operational Procedures

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### **SUMMARY OF MAIN POINTS**

Customs and Border Protection Practice Statements are endorsed Customs and Border Protection policy and must be followed by all Customs and Border Protection employees. This Practice Statement outlines:

- Customs and Border Protection legislative requirements for transfer pricing;
- Customs and Border Protection policies in relation to transfer pricing;
- Procedural guidelines for an applicant when seeking a transfer pricing valuation advice; and
- Suggested document requirements to support a transfer pricing valuation application.

*The electronic version published on the intranet is the current Practice Statement.*

**INTERNAL USE ONLY**

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**BCS CLASSIFICATION:** Strategic Management – Policy - Guidelines

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## **BACKGROUND**

Transfer pricing generally refers to the prices of goods and services provided by one part of any organisation to another. This normally applies to transactions between firms and their subsidiaries or affiliates in other countries. In the context of this practice statement, transfer pricing is an agreement between related companies of multi-national enterprises to adjust original prices of goods sold by one related company to another with the purpose of maximising profit and minimising taxation liabilities. The adjustment may result in either an increase or a decrease in the price of the goods.

From a Customs and Border Protection perspective this may mean that the Customs value of the imported goods could possibly be adjusted after the importation of the goods, either up or down.

## **STATEMENT**

### **Introduction**

The purpose of this Practice Statement is to provide guidance for Customs and Border Protection staff and valuation advice (VA) applicants, in the area of transfer pricing.

### **Context and Scope**

Customs and Border Protection is committed to transparent policy procedures for the laws it administers. The *Customs Act 1901* valuation provisions are of a highly technical nature.

Customs and Border Protection recognises Industry's desire to comply with their Customs obligations and to assist importers on customs valuation matters, a VA service is provided by Customs and Border Protection through the Customs Valuation Advice Unit in Melbourne.

This Practice Statement addresses the processes and preferred documentation for Customs and Border Protection to assess a VA application for the treatment of transfer pricing under Customs valuation legislation.

This Practice Statement is subject to restrictions applying to particular goods. For example, excise-equivalent goods and those subject to duty-offset arrangements are not included.

## **PROCEDURAL STATEMENT**

### **Policy**

The purpose of a Customs and Border Protection transfer pricing VA is for Customs and Border Protection to determine:

- A Customs valuation method as outlined in section 159 of the *Customs Act 1901* that is applicable to the imported goods. The Customs valuation methods are as follows:
  - The transaction value method
  - The identical goods value method

- The similar goods value method
  - The computed value method
  - The deductive (contemporary sales) value method
  - The deductive (later sales) value method
  - The deductive (derived goods sales) value method
  - The fall-back value method
- Whether the proposed adjustment in value meets Customs valuation requirements; and
  - If not, the quantum of adjustment that meets Customs valuation requirements.

An applicant for a Customs transfer pricing VA must identify the imported goods affected by the transfer pricing transactions and the range of adjustment to the Customs value of those imported goods that the client is seeking. Other business lines (e.g. services, loans, manufacturing) will not be considered by Customs and Border Protection in the VA application.

For example:

Applicants may accumulate profit from other business lines in addition to their distribution of imported goods. There may be circumstances where they also provide a domestic maintenance and repair service, help-desk and training service or finance loans. Transfer pricing applicants that combine these business lines for taxation purposes would need to demonstrate what proportion of the relevant transfer pricing adjustment relates to their imported goods.

The VA will determine the range of adjustments to Customs value, either upwards or downwards, that meets Customs and Border Protection's valuation requirements. When making an adjustment to the customs value of imported goods, the adjustment cannot exceed the Customs and Border Protection approved range.

For example:

If it is determined by Customs and Border Protection that the price for the imported goods may vary from 2% to 5% of the import price the intention is that any adjustment to the original customs value could not exceed this range.

A transfer pricing study refers to the activity normally undertaken by the multi-national enterprise whereby it examines the pricing of controlled transactions within the group.

By applying and documenting various accounting and economic testing methods, a transfer pricing study aims to verify whether the group's transactions are arm's length for tax purposes. This transfer pricing study may also be useful for Customs and Border Protection's purposes where the data includes values for traded imported goods.

Before any adjustment can be made to the Customs value, there must be an actual transfer of funds related to the transaction that flows into or out of Australia. Customs and Border Protection will not accept adjustments to the Customs value when the transfer pricing arrangements between related parties are merely notional adjustments.

In determining “price” pursuant to section 154 of the *Customs Act 1901*, Customs and Border Protection requires, in part, that “...the payment is made in money or by letter of credit, negotiable instrument or otherwise...”. The premise is that the original customs value in the import declaration will not be adjusted based on a book or journal entry, where no amount is actually paid or received for the goods. Furthermore, general transactions such as market support payments, foreign exchange variation compensation, risk compensation, may not be prices paid or payable for the imported goods.

Customs and Border Protection recognises that in some instances, an applicant for a VA may also negotiate an Advance Pricing Arrangement (APA) with the Australian Taxation Office (ATO). While there may be some overlap between the two, Customs and Border Protection must not issue a VA for transfer pricing based on unseen APA documentation. The applicant must produce the APA and any documents that supported the APA to substantiate the VA application.

A transfer pricing VA applicant must be a body corporate subject to a written transfer pricing arrangement.

### **Supporting documentation**

The following is a list of documentation Customs and Border Protection has found useful in assessing transfer pricing VA applications.

- i. An overview of the business;
- ii. The organisation structure (including all related parties engaged in transactions potentially relevant to transfer pricing), for example, an organisation chart showing the head office and its domestic subsidiaries, foreign subsidiaries, joint venture partnerships, controlled plants – manufacturing and/or processing, and other significant holdings (25% or more);
- iii. Financial and related reports of the organisation which may include chart of accounts, profit & loss and trial balance statements;
- iv. The operational structure (a description of the transactions that result in the goods being imported into Australia and identification of all parties involved, e.g. order trail, sourcing/manufacturing by overseas related party, exportation of goods etc.);
- v. Inter-company agreements, policies or guidelines relating to the supply and transfer price of the imported goods (for example, the distribution agreement, cost contribution agreement, royalty and licence agreements, sale and purchase agreement between the exporting company and the importing company in

relation to the goods covered by the import declarations in question that allows the price adjustment post-importation of the goods);

- vi. A general identification of controlled inter-company transactions relating to the supply and transfer price of the imported goods;
- vii. A description (or financial system example) of the transfer pricing methodology, data and analysis used in the application;
- viii. An explanation of Customs valuation methodology selected and why other methods were excluded. Note that Customs and Border Protection's valuation methodologies are not analogous to the Berry Ratio or OECD methodologies, therefore applicants should approach the Customs Valuation Advice Unit in Melbourne as to whether this particular information requirement would be satisfied based solely on the company's transfer pricing analysis;
- ix. A description of any government initiatives and interventions in the country of export known by the applicant to have directly affected the price of the goods in the import transactions in question. For example, are there any price controls, interest rate controls, controls over the payment or royalties, subsidies to particular sectors, exchange control or exchange rate policy, etc., that have affected the price of the goods in the transactions in question?
- x. Amount of proposed adjustment to the value of the imported goods and documentation to support any adjustments proposed for each individual line of imported good , preferably in an *Excel* spreadsheet (both in hard copy and electronically) that records:
  - The tariff item and description of the imported goods;
  - The original details at line level of each import declaration affected;
  - The amended data for each affected line; and
  - The percentage of the net adjustment for customs duty, luxury car tax or goods and services tax (GST) where applicable.
- xi. Any research undertaken of comparable transaction values for identical or similar goods imported by independent enterprises in comparable transactions and supporting documentary evidence. Note that Customs and Border Protection will undertake indicative research of its own to guide its VA decision; and
- xii. Any relevant documentation the applicant considers would assist Customs and Border Protection in making a decision on a transfer pricing issue (for example, ATO Advance Pricing Arrangement, ATO tax ruling or ATO risk survey).

### **Related dealing requirements**

The transaction value method requires that the transaction is at arm's length, that is the transaction is market driven rather than relationship driven. When an importation involves a transaction between related parties, the question of whether the relationship has affected the price must be considered.

When there are related party dealings, Customs and Border Protection asks two questions:

- i. Are the parties related in terms of the legislation? and
- ii. Has that relationship affected the price paid for the goods?

In a sale between related parties, the transaction value shall be accepted if the applicant could demonstrate that such value closely approximates the transaction value in sales to unrelated parties of identical or similar goods for export to the same country of importation about the same time as imported goods or deductive value of identical or similar goods sold in a contemporary sale (section 161C) or computed unit price of identical or similar goods that were imported into Australia about the same time as the imported goods (section 161F). If the above requirements are not met, the transaction value will be regarded as unacceptable by Customs and Border Protection and the applicant would have to consider using other alternative valuation methods set out in section 159 of the *Customs Act 1901*.

### **Related documentation**

If presented with an application for a VA related to transfer pricing, Customs and Border Protection will have regard to the following:

- Applicant's valuation history and previous VA applications between Customs and Border Protection and the applicant;
- The outcomes of any transfer pricing study that has been examined by the ATO or subject of a prudential audit;
- The nature and identification of the goods considered in the ATO transfer pricing study;
- The documentation supporting the ATO transfer pricing study; and
- The explanation as to how the ATO transfer pricing study is directly connected to the imported goods subject of the VA.

### **VA validity and conditions**

#### *Validity*

A VA applies prospectively from the date that it is issued in respect of any relevant adjustments to the customs value or a redetermination of the customs value.

A VA issued to an applicant is valid in all Australian ports for five (5) years from the date of the advisory letter, unless revoked.

Customs and Border Protection may revoke or amend a VA within five years, where particular circumstances warrant. Such circumstances include:

- Where an amendment is made to the legislation which has relevance to the advice;
- Where incorrect information was provided to Customs and Border Protection or relevant information was withheld from Customs and Border Protection;
- Where circumstances set out in the VA application have changed;

- Where Customs and Border Protection changes its views (this may occur as a result of legal precedent); and
- Where Customs and Border Protection has issued conflicting advices.

If Customs and Border Protection subsequently identifies a false or misleading statement or an omission, an administrative penalty may be imposed in accordance with the *Customs Act 1901*.

If the circumstances set out in the VA application have changed (e.g. the transaction value in sales between unrelated parties of identical or similar goods in comparable transactions have changed or an applicant undertakes another annual transfer pricing study), the status of the VA should be discussed with the Customs Valuation Advice Unit as the change in circumstances or the annual transfer pricing study might necessitate the issuance of a new VA.

#### *Document retention*

Under the *Customs Act 1901*, an owner of goods imported into Australia is required to keep copies of all relevant commercial documents in their possession for a period of five (5) years.

#### **Amending the customs value**

An enhancement to the Integrated Cargo System (ICS) to enable brokers and owners to make amendments to customs values for multiple declarations is currently being scoped.

#### *Payment of Additional duty*

Where a transfer pricing VA has been issued and an adjustment results in the customs value increasing, the proportionate amount of additional duty owed must be paid against the imported goods on the appropriate import declaration.

#### *Refund of duty*

Where a transfer pricing VA has been issued and an adjustment results in the customs value decreasing, the applicant/importer may be entitled to a refund of duty. Where the initial import declaration was lodged electronically, the applicant/importer should lodge the refund application by amending the original import declaration electronically quoting the appropriate refund reason code and completing the change reason description field. If electronic lodgement is not possible, the applicant/importer may lodge a refund application by submitting a completed and signed Refund Application Form and a copy of a new Import Declaration or Import Declaration out of warehouse specifying which particulars have changed.

Section 163 of the *Customs Act 1901* confers the power for refund of duty under prescribed circumstances. Regulation 126(1)(fa) of the *Customs Regulations 1926* provides that duty may be refunded if the price of goods has been taken into account in determining the Customs value of the goods, and a decrease in the price has accrued to the importer, and that decrease was not taken into account in determining the customs value of goods.

### *No duty payable*

Where there is no duty payable, importers are encouraged to still apply for VA. If relevant goods are subject to transfer pricing adjustments, then notification to Customs and Border Protection of the goods and amounts is required. For this category of applicant, there is still a requirement to retroactively amend previous import declarations.

### **GST and Input Tax Credit scheme**

The ATO requires all customs duty adjustments to be processed through the ICS, as customs duty adjustments will lead to subsequent adjustment to the GST.

Whilst it is understood most of the relevant adjustments will acquit through the transaction and reporting cycle, the ATO requires such amendments to be properly accounted for on the ICS.

### **RELATED INSTRUCTIONS AND GUIDELINES**

- TAPIN User Manual and TAPIN Broker Manual
- INS Guidelines
- This Practice Statement replaces Australian Customs Notices 2002/30 and 2001/73 and 1997/36.

### **RELATED POLICIES AND REFERENCES**

- Australian Customs Service Manual Volume 8A.
- *Customs Act 1901*
- *Customs Regulations 1926*

### **KEY ROLES AND RESPONSIBILITIES**

The policy owner of this practice statement is:

Director Valuation and Origin Section  
Trade Services Branch  
Australian Customs and Border Protection Service

### **CONSULTATION**

#### **Industry Consultation**

This Practice Statement was placed on the Customs and Border Protection website for public comment, with a number of stakeholders contributing.

#### **Government Consultation**

This Practice Statement was circulated to the Australian Taxation Office and the Department of Foreign Affairs and Trade.

#### **Internal Consultation**

The following internal stakeholders were consulted during the development this Practice Statement:

- Compliance Division; and
- Customs Legal Unit.



**APPROVAL**

Approved on 29 May 2009 by:

Sue Pitman  
National Director Trade  
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**ENDORSED**

Endorsed on 9 July 2009 by:

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