

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

⚠ This cover sheet is provided for information only. It does not form part of *PS LA 2016/1 - Transfer pricing adjustments with potential customs implications*

⚠ This document has changed over time. This version was published on *24 January 2025*



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

This Practice Statement is an internal ATO document and 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 do not 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 this Practice Statement is 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 adjustments might be made

The type of adjustments specified within section 1 of this Practice Statement may have been made:

- in an audit
- in a settlement, or
- where the entity has objected to an amended assessment or as part of an advance pricing arrangement (APA) or mutual agreement procedure (MAP).

3. Entity's concerns when we make 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 our assistance to the extent the adjustments relate to imported goods.

4. 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, we do not need to attribute adjustments made to an entity's taxable income to individual components 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 the 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 refunds of customs duty or determining additional duty liabilities and to alleviate the concern referred to in section 3 of this Practice Statement.

5. When an entity might 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 of this Practice Statement.

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. Information to obtain when an entity seeks our assistance

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.

approach the ABF with relevant documentation, including any adjustment table.¹

7. Additional information you can provide to assist the entity

You are to populate an adjustment table in an audit position paper or in a subsequent revised adjustment table which is consistent with the audit outcome or 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 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 of the ITAA 1997.

Such a note would be appropriate in instances where, for example, a profit-based method has been applied in making an adjustment to taxable income. An example of the general economic allocation key 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, the adjustment table is to reflect the imported purchases in total.

8. Contacting the Australian Border Force when making transfer pricing adjustments

You do not need to contact the ABF. Seeking a customs duty refund from, or reporting additional duty liabilities to, the 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

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¹ Further information about the refund and payment of additional customs import duties is available at [Department of Home Affairs](#). Voluntary disclosure provisions exist under sections 243T and 243U of the *Customs Act 1901* to avoid application of infringement penalties. Information regarding voluntary disclosures can be found at [Australian Border Force web page - Voluntary Disclosures](#).

Amendment history

24 January 2025

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.

References

Legislative references	ITAA 1997 Subdiv 815-B 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

ATO references

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