TAX TALKS

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139 | Incoterms

To determine whether a supply of goods qualifies as an export, you need to determine who is actually the one exporting the goods. And this depends on the Incoterms the buyer and seller agree on.

Incoterms

The commercial terms the buyer and seller agree on need to stipulate a range of things. Who covers insurance and freight. Who bears the risk up to and from what point. And who clears the goods for customs out of Australia and into the destination country.

In this episode of Tax Talks Simon Dorevitch of A & A Tax Legal Consulting in Melbourne will walk you through the Incoterms and what they mean and do.

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Pre-Defined Commercial Terms

The seller and buyer can agree on whatever they like. But if they negotiated every little detail for every trade from scratch, they wouldn't get much done. And so international trade uses pre-defined commercial terms.

The most commonly used pre-defined commercial terms are the International Commercial Terms – in short Incoterms – issued by the International Chamber of Commerce in Paris. So rather than negotiating every little detail seller and buyer can just refer to a particular Incoterm and both parties know exactly what they are agreeing on.

GST

But why do we worry about Incoterms when we talk GST? Or more specific when we discuss the GST status of a supply of goods? Because the terms of the trade will determine who exports the goods and hence whose supply is GST-free as an export.

Incoterm Groups

There are four groups of Incoterms – E, F, C and D. Critical division points are the division of costs and risk.

Group E – Departure Terms

The buyer assumes all of the work and risk. They pick the goods up from the seller's premises. So all the seller has to do is make the goods available at their own premises.

The only Incoterm in this group is Ex Works.

Group F – Shipment Terms – Buyer pays main carriage

Buyer pays the main carriage and assumes most of the work and risk. The seller delivers the goods to a carrier or place appointed by the buyer. And from then on the buyer assumes all the work, risk and costs.

The Incoterms in this group are FCA, FAS and FOB.

Group C – Shipment Terms – Seller pays main carriage

The seller pays the main carriage and for CIF and CIP pays the insurance. But after shipment and dispatch the seller bears no more risk or costs. The buyer assumes any risk of loss of or damage to the goods or additional costs from that point.

The Incoterms in this group are CFR, CIF, CPT and CIP.

Group D – Arrival Terms

The supplier arranges carriage and bears all costs and risk needed to get the goods to their destination. However, the seller is not responsible for import customs clearance and un-loading at the final destination. The buyer does all this. The buyer must pay for and arrange import customs clearance and un-loading from the forwarder's vehicle at the final destination.

The Incoterms in this group are DAF, DES, DEQ, DDU and DDP.

Incoterms

So here are the 13 Incoterms. Traders usually just refer to their three-letter acronym.

1   EXW = EX WORKS (… named place)

With EXW the seller does basically nothing apart from providing the goods. The seller makes the goods available to the buyer at their premises, for example their factory or warehouse. But after that it is all in the hands of the buyer.

The buyer provides the vehicles and loads the goods onto these. The buyer clears the goods for export, unless otherwise agreed. And the buyer bears all costs and risks involved in taking the goods from the seller's premises to the desired destination. EXW represents the absolute minimum obligation the seller can assume.

2   FCA – FREE CARRIER (… named place)

Under FCA the seller starts to assume some obligations. The seller is responsible for handing the goods, cleared for export, over to a carrier arranged by the buyer.

You can use FCA for any mode of transport, including multimodal transport.

3   FAS – FREE ALONGSIDE SHIP (… named port of shipment)

With FAS the seller places the goods alongside the vessel on the quay at the named port of shipment. From that moment on the buyer bears all costs and risks of loss of or damage to the goods and clears the goods for export.

You can only use FAS can for sea or inland waterway transport.

4 FOB – FREE ON BOARD (… named port of shipment)

With FOB the seller clears the goods for exports and then passes the goods over the ship's rail at the named port of shipment. From that point onwards the buyer bears all costs and risks of loss of or damage to the goods.

You can only use FOB for sea or inland waterway transport. For roll-on/roll-off or container traffic where there isn't really a ship's rail the goods pass over, it is better to use the FCA term.

5 CFR – COST AND FREIGHT (… named port of destination)

With CFR the seller clears the goods for export and pays the costs and freight necessary to bring the goods to the named port of destination. The buyer assumes the risk of loss of or damage to the goods the moment the goods pass the ship's rail in the port of shipment. This includes any additional costs due to events occurring after the time the goods have been delivered on board the vessel.

You can only use CFR for sea and inland waterway transport. For roll-on/roll-off or container traffic, use the CPT term since there isn't really a ship's rail the goods pass over.

6 CIF – COST, INSURANCE AND FREIGHT (… named port of destination)

With CIF the seller has the same obligations as under CFR – so the seller clears the goods for export and pays to bring the goods to the name port of destination. But in addition under CIF the seller also has to procure and pay for marine insurance against the buyer's risk of loss of or damage to the goods during the carriage.

However, the seller only has to obtain minimum coverage unless agreed otherwise.

You can only use CIF for sea and inland waterway transport. And in the case of roll-on/ roll-off or container traffic, use the CIP term instead of CIF since there isn't really a ship's rail the goods pass over.

7 CIP – CARRIAGE AND INSURANCE PAID TO (… named place of destination)

Under CIP the seller clears the goods for export and has the same obligations as under CPT but with the addition that the seller has to procure and pay for cargo insurance against the buyer's risk of loss of or damage to the goods during the carriage. Just as with CIF, the seller only has to obtain minimum insurance coverage.

You can use the term CIP for any mode of transport including multimodal transport.

8 CPT – CARRIAGE PAID TO (… named place of destination)

With CPT the seller clears the goods for export and pays the freight for the carriage of the goods to the named destination.

The risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered to the carrier, is transferred from the seller to the buyer when the goods have been delivered into the custody of the carrier. If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

You can use CPT for any mode of transport including multimodal transport.

9 DAF – DELIVERED AT FRONTIER (… named place)

With DAF the seller fulfills his obligation to deliver when the goods have been made available, cleared for export, at the named point and place at the frontier, but before the customs border of the adjoining country. The term "frontier" may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term.

DAF is primarily intended to be used when goods are to be carried by rail or road, but it may be used for any mode of transport.

10 DES – DELIVERED EX SHIP (… named port of destination)

Under DES the seller fulfills his obligation to deliver when the goods have been made available to the buyer on board the ship uncleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named port of destination.

You can only use DEF for sea or inland waterway transport.

11 DEQ – DELIVERED EX QUAY (DUTY PAID) (… named port of destination)

Under DEQ the seller fulfills his obligation to deliver when he has made the goods available to the buyer on the quay (wharf) at the named port of destination, cleared for importation. The seller has to bear all risks and costs including duties, taxes and other charges of delivering the goods thereto.

You can only use DEQ for sea or inland waterway transport.

12 DDU – DELIVERED DUTY UNPAID (… named place of destination)

Under DDU the seller fulfills his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the costs and risks involved in bringing the goods thereto (excluding duties, taxes and other official charges payable upon importation) as well as the costs and risks of carrying out customs formalities. The buyer has to pay any additional costs and to bear any risks caused by his failure to clear the goods for import in time.

You can use DDU irrespective of the mode of transport.

13 DDP – DELIVERED Duty PAID (… named place of destination)

Under DDP the seller fulfills his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the risks and costs, including duties, taxes and other charges of delivering the goods thereto, cleared for importation.

You can use DDP irrespective of the mode of transport.

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