Provisional values

Operational policy

Contents

About this policy

Introduction

1. This policy outlines the policy reasons and background to the legislative provisions providing for importers to use provisional Customs values for imported goods on entry.

Related documents

2. Use this operational policy in conjunction with the following documents:

Document name	Document type
Verify importer automatically qualifies to use provisional values	Process and procedures
Approve or decline use of provisional values	Process and procedures
Remind importer to provide a final value (FV)	Process and procedures
Confirm final Customs value	Process and procedures
Enforce final Customs value	Process and procedures
Compensatory interest and late payment penalties	Operational policy
OPS PRO 071 Entry of imported goods	OPS PRO
OPS PRO 099 Post clearance revenue adjustments	OPS PRO
OPS PRO 039 Valuation of goods	OPS PRO
OPS INF 036 Royalties: NZ Case Law	Working information
OPS INF 016 Transaction value method – Clause 2	Working information
OPS INF 042 Adjustments to price paid or payable clause 3	Working information
OPS INF 018 General valuation information	Working information

Overview

3. Importers are required to declare the value of imported goods to Customs (commonly referred to as Customs value or value for duty). An import entry must be provided to Customs for goods worth $1,000 or more. The import entry provides details about goods (including the Customs value).

4. The Customs value is determined using valuation methods that are set out in Schedule 4 of the Customs and Excise Act 2018 (the Act).

5. The Act allows importers to use a provisional value when the importer is not able to establish the final Customs value of their imported goods at the time of importation.

6. A provisional value is:

   - a reasonable estimate of the value of imported goods
   - based on information that is available to the importer at the time of entry
   - calculated applying the requirements of the valuation methodology as set out in Schedule 4 of the Customs and Excise Act 2018, as far as practicable.

7. An importer must pay the duty owed on the provisional value.

8. An importer who wants to use provisional values must meet certain criteria under the Act, or have the approval of the Chief Executive.

9. An importer who uses provisional values must finalise the values within 12 months after the end of the importer's financial year. Customs has various sanctions if the final value is not completed.

Who automatically qualifies to use provisional values

10. Sections 102(1)(a) and (b) of the Act allow an importer to automatically qualify for the Scheme if:

    - the importer is party to a transfer pricing agreement for the supply of their imported goods and has a binding ruling in place with Inland Revenue (IR) (i.e. an Advance Pricing Agreement or a Bilateral Pricing Agreement or a Multilateral Pricing Agreement), and as a result of that agreement it is not possible for the importer to finalise the value of their imported goods on importation
    - the Customs value of imported goods is determined under the Transaction Value Method[1], and there are royalty or licence fees payments (which may not be able to be finalised at the time of importation) to be added to the transaction value
    - the Customs value of imported goods is determined under the Transaction Value Method, and there are further proceeds of sale to be paid by the buyer to the seller of the goods after they are sold in New Zealand.

[1] For information on the transaction value method see Schedule 4 of the Act and OPS INF 016 and 018 and OPS Pro 042.

11. These automatic qualifying provisions reduce compliance and administration costs and it is clear to importers who is eligible to use provisional values.

Transfer pricing agreement and binding rulings

Transfer pricing agreement

12. Transfer pricing is the setting of prices for the transfer of goods, services and intangibles[2] between associated parties in different countries.

13. Transfer pricing documentation is often used by multinational companies to form the basis of the Customs value of their imported goods.

14. There is the potential for multinational companies to use transfer pricing to transfer costs from an affiliate in one country to an affiliate in another country to achieve tax savings.

Inland Revenue Binding rulings

15. A binding ruling is IR's interpretation of how a tax law applies to a particular arrangement.[3] An arrangement is any agreement, contract, plan or understanding, including any steps and transactions that carry it into effect.

16. A binding ruling as defined in section 102(14) relates to binding rulings for importers with transfer pricing agreements.

17. IR offers a special type of binding ruling for companies using transfer pricing called an Advance Pricing Agreement (APA). An APA sets an agreed transfer pricing methodology for the transfer of goods, services, and intangibles, and therefore the profit level that a multinational company in New Zealand should achieve, and pay tax on. Companies with an APA must report to IR on the APA annually when they make their tax return. Companies using transfer pricing may depend on information from an associated overseas company to calculate a final value for imported goods.

18. Where New Zealand has a double tax agreement with another country, a multinational company using transfer pricing can apply for a resolution of a dispute on tax to be paid in each country under a Mutual Agreement Procedure, which is also a type of binding ruling under section 102(14). This procedure results in a bilateral (BAPA) or multilateral (MAPA) APA.

19. A double tax agreement is negotiated between New Zealand and other countries to decide which country has the first or sole right to tax specific types of income. [4]

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[2] An intangible asset is an asset that lacks physical substance. It includes patents, copyrights, franchises, goodwill, trademarks, trade name and software and other intangible computer based assets.

[3] More information is available on transfer pricing and binding rulings on the IR website,

https://www.ird.govt.nz/international/business/transfer-pricing/ and http://www.ird.govt.nz/technical-tax/binding-rulings/what-is-br/ .

Royalties, licence fees and further proceeds of sale[5]

20. The transaction value method used to determine the Customs value of imported goods must include the value of any royalties, licence fees and/or further proceeds of sale that are payable by the buyer of the goods.

21. Royalties and licence fees are payment for the acquisition or use of a protected right. When imported goods are licensed goods, or contain protected rights, the importer may be required to pay royalties or licence fees to the licensor (i.e. holder of the right) under a separate agreement. **Example**: An importer may have to pay a licence fee to Microsoft for imported CDs loaded with the Windows operating system.

22. The amount of royalties and licence fees payable are often calculated on the sales amount of the goods after they are sold in New Zealand. The importer may be unable to establish the value of royalties and licence fees to establish the final Customs value of their imported goods at the time of importation.

23. Further proceeds of sale are applicable where there is an agreement by the buyer of the imported goods to share with the seller, the proceeds of any subsequent resale, disposal, or use of the imported goods. The proceeds of resale would not be known until after the imported goods are sold in New Zealand, so the importer would be unable to finalise the Customs value of their goods at the time of importation.

Verifying that importers can use provisional values

24. Importers that automatically qualify to use provisional values should notify Customs that they intend to declare provisional values. Customs must verify that they meet the legislated criteria.

    See: Process: Verify importer automatically qualifies to use provisional values.

25. Some importers will not meet the legislative criteria to use provisional values. These importers must apply to Customs to be able to use provisional values. Customs may approve or decline the use of provisional values by these importers (see the Process: Approve or decline use of provisional values).

26. Criteria for considering an application for approval to use provisional values are set out in the table below. A full explanation of the criteria with examples is in guidance[6].

No.	Decision criteria
1	Does any reasonable way exist for the importer to determine the final Customs value of their imported goods at the time of importation?

[4] More information is available on double tax agreements on the IR website: http://www.ird.govt.nz/international/residency/dta/double-tax-agreements-index.html

[5] The value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller.

[6] Evaluate importer's application to use provisional values

No.	Decision criteria
2	Is the information the importer needs to provide the final Customs value unavailable for reasons that are beyond the importer's control?
3	Is the unavailable data relevant for the determination of the Customs value of the imported goods?
4	Has the importer been previously rejected and/or suspended from using provisional values?
5	Is the importer likely, or able, to provide an accurate final value and comply with the requirement to update this within the prescribed timeframe?
6	What is the Inland Revenue Department's view if the applicant has a transfer pricing agreement without an APA, BAPA or MAPA.

27. The chief executive can decide to approve the use of provisional values:

    - by a particular importer in relation to particular goods or a class of goods (section 102(6)(a)), or
    - generally for a class of importers or class of goods (or both) (section 102(6)(b)).

28. Customs must publish any approvals made under section 102(6)(b) on the Customs (or other publicly available) website. Granting of a general approval will only be necessary if applications to use provisional values for the same reasons are commonly made, outside of the legislated reasons, and it would be more efficient for Customs to grant such an approval.

Consulting with Inland Revenue

29. IR[7] must be consulted when an importer with a transfer pricing agreement makes an application that does not meet the criteria for automatic entry. **Example**: the importer has a transfer pricing agreement but not a binding ruling from IR, or the importer has a transfer pricing agreement and a binding ruling from another jurisdiction.

30. IR has the expertise and regulatory oversight to advise:

    - whether the transfer pricing agreement is valid and acceptable under New Zealand tax law
    - whether the company's transfer pricing practices mean that the value of goods they are importing cannot be finalised at import
    - the company is a good tax citizen.

[7] International Revenue Strategy Business Unit

Terms and conditions of an approval to use a provisional value

31. Customs can set any appropriate terms, conditions or restrictions in giving an approval to use provisional values. Customs can also vary any terms and conditions of the approval or withdraw the approval (Section 102(7)).

An importer must provide a reasonable estimate of value of goods

32. An importer must provide a reasonable estimate of the provisional value of goods based on the information available at the time the goods are imported (section 102(2)). The importer pays duty on the estimated value of imported goods, which is treated as the Customs value until the final value is provided.

33. If Customs finds the provisional value is not a reasonable estimate, Customs can:

- amend the assessment for duty under section 117, and pursuant to section157, charge compensatory interest and late payment penalties if the importer has not paid within the required timeframe.
- suspend the importer from the scheme for a period decided by the chief executive (sections 102(10 and 11))
- charge the importer with an offence under section 363 or 364 of the Act.

One-off versus on-going applications

34. Most applications to use provisional values will be for on-going use. However, in some situations, an importer may request a one-off approval for high value or special purpose imports.

Voluntary disclosures

35. Some importers may choose not to use provisional values or may not be eligible or approved to use provisional values. These importers can only disclose changes in values to Customs on an ad hoc basis through voluntary disclosure.

36. Importers should be encouraged to use provisional values if the Customs value of their imported goods is likely to change after importation and they qualify to use provisional values.

37. Compensatory interest will be payable on voluntary disclosures unless the amendment is processed in the same payment period.

38. If the importer discloses changes in value before Customs discovers the error and/or audits the importer Customs will still charge interest but it may be at a reduced rate.

Finalising provisional values

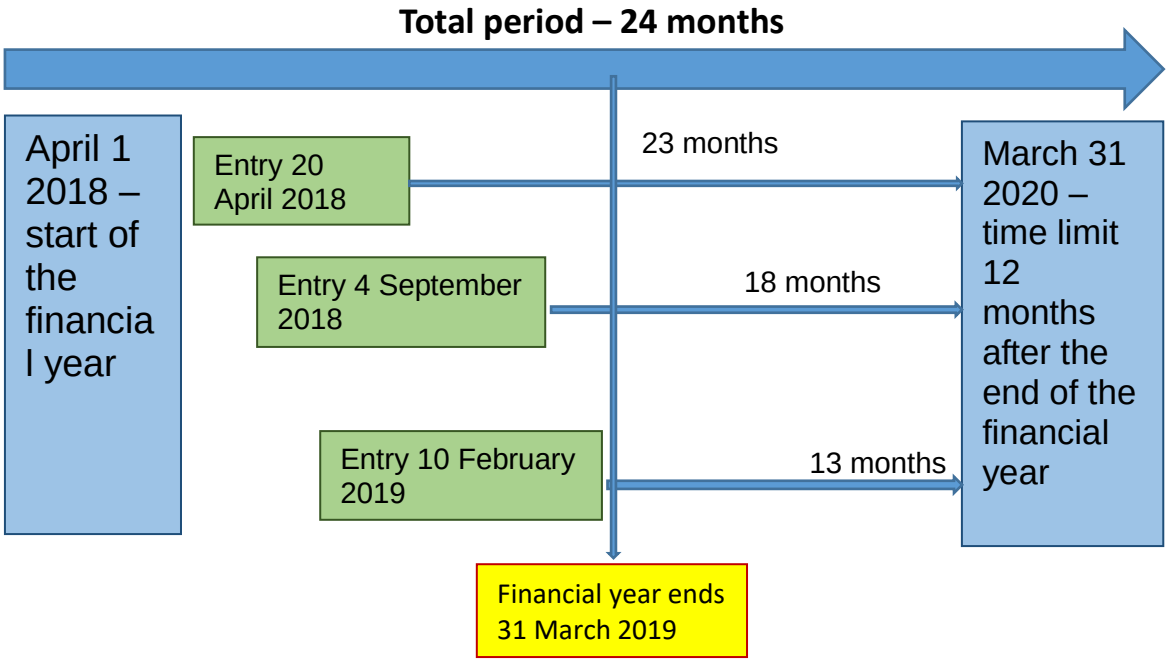
39. Customs uses the value of goods to calculate tariff duty and GST owed on imported goods. If the value of goods is not finalised, the importer may not pay all the duty and GST they owe. Statistics New Zealand also uses Customs' import data for official trade statistics.

40. Importers must finalise provisional values within the time limit, and in the way set out in the Customs (Amendment of Provisional Value) Rules 2018 (section 112).

Time limit to finalise provisional values

41. Importers using provisional values must finalise the values within 12 months after the end of the importer's financial year (Customs and Excise Regulations 1996, Regulation 31A). The importer must provide details of their financial year during registration.

42. The figure below shows an example using a **1 April to 31 March** financial year. Note that not all importers' financial years run from 1 April to 31 March.



43. This time limit ensures that importers will have finalised their accounts each financial year and can complete all provisional values once the year-end values are known. As importers have to declare a reasonable estimate of value when the goods are imported, the amount of duty owed, after the final value is entered, is expected to be relatively small.

44. Note that Customs will have a shortened period to audit and amend assessments of importers who use provisional values, compared to standard entries because of the time limit. The legislated time for amendment of assessments is four years after the original assessment (the provisional value in this case), section 118(1). However, when importers use provisional values, Customs can only establish if an assessment is correct after the final Customs value is known, instead of at the date of original assessment.

45. Importers must finalise values on an aggregate or global basis (all final values for the importer's financial year are provided together), see Regulation 31A and Customs

(Amendment of Provisional Value) Rules 2018. Aggregate returns will be paper based initially.

Refund of duty if final Customs value is less than provisional value

46. An importer pays duty on the provisional Customs value. Customs must refund the difference if it is satisfied the final Customs value of the goods is less than the provisional value (section 143).

When the provisional value is not finalised within the time limit

47. Customs has the following options (including any combination of these options) if the provisional value is not finalised on time:

- Customs can assess the final value and invoice the importer any outstanding duty and GST under section 117
- under sections 156(3) to (6), 157 and 159, compensatory interest and late payment penalties will apply if the importer has not paid within the required time limit
- Customs can suspend the right of the importer to use provisional values under sections 102(10)-(12) of the Act
- Customs can charge the importer with an offence under section 363 of the Act.

Change of importer's financial year

48. An importer may change their financial year for a number of reasons.

49. If an importer using provisional values changes their financial year they must immediately advise Customs of that change.

50. If the end of the new financial is earlier than the end of the original financial year, the importer must finalise those provisional value entries made under the original financial year, up to the start date of the new financial year notified to Customs, within 12 months of the end of the original financial year.

51. The importer must finalise provisional value entries made after the start of the new financial year notified to Customs within 12 months of the end of the new financial year.

52. If the new financial year is later than the end of the original financial year, the importer must finalise their provisional value entries according to the period the provisional value entries were made in, as follows:

- for provisional entries made during original financial year, those entries must be finalised as normal within 12 months after the end of the original financial year.

- for provisional entries made in the interim period after the end of the financial year but before the start of the new financial year, those entries must be finalised within 12 months of the end of the continuing (interim) financial year.

- for provisional entries made after the start of the new financial year, those entries must be finalised within 12 months of the end of the new financial year.

Example 1 – New financial year is earlier than end of original financial year

An importer with a 1 April to 31 March financial year notifies Customs on 20 September 2020 that they are changing their financial year to a 1 January to 31 December financial year starting in year 2021.

For the period 1 April to 31 December 2020 during their original financial year they have made 1000 provisional entries. The date those entries must be finalised is 12 months after the end of the 1 April 2020 to 31 March 2021 financial year ie. by 31 March 2022.

Provisional value entries made in the new financial year of 1 January 2021 to 31 December 2021 must be finalised by 12 months after the end of the new financial year (31 December 2022).

Example 2– New financial year is later than end of original financial year

An importer with a 1 April to 31 March financial year notifies Customs on September 30 2020 that they are changing their financial year to a 1 July to 30 June financial year starting in year 2021.

From 1 April 2020 to 31 March 2021 during their original financial year they make 1000 provisional entries. Those entries must be finalised as normal by 12 months after the end of the 1 April 2020 to 31 March 2021 financial year , ie. by 31 March 2022.

In the interim financial year after 31 March 2021, but before the start of the new financial year of 1 July 2021 (i.e. 1 April to 30 June 2021), the importer makes 500 provisional entries. Those entries must be finalised by 12 months after the end of the 1 April 2021 to 31 March 2022 financial year , ie. by 31 March 2023

The importer then makes another 1000 entries in their new financial year from 1 July 2021 to 30 June 2022. The date those entries must be finalised is 12 months after the end of the new financial year ie. 30 June 2023.

Inadvertent error

53. An importer may be entitled to a remission or refund of interest when they make an inadvertent error when providing the final value of goods after using a provisional value (section 166).

Rights of appeal

54. Customers using provisional values have a right of appeal if Customs:

    - declines to approve an importer's request to use provisional values, section 102(6)(a)
    - varies the terms and conditions of an approval to use provisional values or withdraws the approval, section 102(8)
    - suspends the right to use provisional values, section 102(10)-(12)

- amends the assessment for duty if a provisional value is not a reasonable estimate (section 117) or if the importer fails to enter the final value or Customs amends the final value under section 117(4). An importer can also ask for an administrative review in this instance (section 347 and Schedule 7 of the Act).

55. Customers can also ask for an administrative review on :

- statements of liability for compensatory interest and late payment penalties
- not refunding or remitting compensatory interest or a late payment penalty
- issuing of, or amount of, an administrative penalty
- refusal to remit or refund a further penalty for late payment of an administrative penalty.

56. An importer cannot ask for an administrative review when Customs:

- declined the importer when they applied to use provisional values
- suspended their ability to use provisional values.

REFERENCES

Customs and Excise Act 2018

- Section 101 Importer must specify Customs value on entry
- Section 102 Provisional Customs value
- Section 112 Importer to amend assessment that includes provisional Customs value
- Section 117 Amendment of assessments
- Section 156 Cases where no entry or amendment under section 112 made
- Section 363 Offences for failure to make entry, etc.

Tax Administration Act 1994

- Section 3 Definition of binding ruling
- Part 5A Binding rulings

Income Tax Act 2007

- Subpart BH 1 Double tax agreements
- Section GB 2 Arrangements involving transfer pricing

Customs and Excise Regulations 1996

- Regulation 31A

Customs Rules

- Customs (Import Entry WCO Message) Rules 2013
- Customs (Amendment of Provisional Value) Rules 2018