



TAX TALK- BUYING AND SELLING COMMISSIONS

Difference between Buying and selling Commissions

In Customs, in an agency relationship, one party is called the Agent and the other Party, the principal. An agent is a person who performs actions on behalf of the principal. The fees the agent receives for its services are called commissions. Typically, the commission is equal to an agreed percentage of the price of the goods.

In a buying agency, the principal is the buyer and in a selling agency, the principal is the seller. Buying commissions are fees paid to a bona fide buying agent for the services it performs on behalf of the buyer in connection with the purchase of the imported goods. Selling commissions are fees paid to a selling agent for the services it performs on behalf of the seller in the sale of the imported goods. It is important to note that when the intermediary is acting as an agent, it is not the actual buyer or the actual seller of the imported goods but rather, a third party who is performing services on behalf of either the buyer or the seller.

Buying and Selling Commissions under the Customs Tariff ACT

Selling commissions incurred by the buyer with respect to the imported merchandise are one of the specified additions to the price actually paid or payable. An addition is to be made for such selling commissions unless they are already included in the price. (For example, if the seller pays its agent a commission and includes this amount in the price it charges the buyer for the imported goods, no addition is made for the selling commission since it is already included in the price). Selling commissions incurred by the buyer with respect to the imported goods are included in the value used to calculate Customs duty either as part of the price actually paid or payable or as an addition thereto.

In contrast to selling commissions, **buying commissions** are not one of the specified additions to the price actually paid or payable. Therefore, no addition is made for bona fide buying commissions incurred by the buyer (that is, commissions paid to a bona fide buying agent who meets the criteria discussed in this publication). Except as noted below, bona fide buying commissions are not included in the transaction value of the imported merchandise.

Examples of services provided by buying agents

Examples include compiling market information, gathering samples, translating, informing the seller of the desires of the buyer, locating suppliers, placing orders based on the buyer's instructions, procuring the merchandise, assisting in factory negotiation, inspecting and packing merchandise, and arranging for shipment and payment.

Examples of services provided by selling agents

It is not important what the agent refers to himself/herself as. What is important is the role she/he plays in the transaction. Examples of the services which are often rendered by a selling agent include seeking customers for the seller's goods, maintaining samples and showing them to prospective buyers, assisting in preparing export documents and arranging for insurance, transport and storage.

Indications that the intermediary is not a buying agent but rather an independent seller

In some cases, an intermediary may not be functioning as an agent at all, but rather as an independent buyer/seller. In such case, the amount that is referred to as the buying commission may actually be the intermediary's mark-up or profit which would constitute part of the total price paid by the buyer and part of transaction value. Some indications would be that the intermediary operates an independent business primarily for its own benefit, that it has unlimited discretion regarding the purchase of the goods from the seller, that the purported buyer and seller have no direct contact, and that the intermediary obtains title to the goods.

Significance of a buying agency agreement or the absence of such an agreement

A written buying agency agreement which sets forth the obligations of the buyer and agent is evidence of the buying agency.

While the agreement is important, it is more important to consider whether the parties are actually doing what they agreed to do. For example, the fact that the agreement indicates that the agent must obtain the buyer's written approval before entering into an agreement with the seller is meaningless if the purported agent never obtains the buyer's written approval.

Also, the fact that the agreement indicates that the buyer will be responsible for selecting the manufacturer is meaningless if the purported agent selects the manufacturer. Where the actions of the parties indicate that the buyer maintains little or no control over the agent, there is no bona fide buying agency relationship, even if the agreement provides otherwise.

The absence of a buying agency agreement does not necessarily preclude the existence of a bona fide buying agency relationship. However, it will be very difficult to establish one without it.

Burden of proof

The importer has the burden of proving the existence of a bona fide buying agency relationship. Absent sufficient proof, commissions paid by the importer will be included in the transaction value of the imported merchandise.

Factors considered to be controls while determining the authenticity of a bona-fide buying agency

1. Which party bears the risk of loss for lost or damaged merchandise?

Generally, a buying agent does not bear the risk of loss

2. Who absorbs the cost of shipping and handling?

Buying agents generally do not absorb such costs

3. Which party controls the manner of payment for the goods?

Generally, a buying agent would not control how and when the seller is paid

4. Could the buyer purchase from the manufacturers without using the services of the agent?

If the answer is no, the agent may be a selling agent

5. Was the intermediary operating an independent business primarily for its own benefit?

If the answer is yes, it is possible that the intermediary is not an agent but an independent seller

6. is the intermediary financially detached from the manufacturer or seller?

If not, it is possible that the intermediary may not be acting on behalf of the buyer, but on behalf of the seller

Please visit any Revenue and Customs Office nearest to you or email us your queries on info@frcs.org.fj

THE END