

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
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4. The importing Party shall not subject an importer to any penalty for making an invalid claim for preferential treatment if the importer:

- (a) upon becoming aware that such claim is not valid, promptly and voluntarily corrects the claim and pays any duty owing; and
- (b) in any event, corrects the claim and pays any duty owing within a period determined by the Party, which shall be at least one year from the submission of the invalid claim.

This paragraph shall not prevent a Party from taking action under Article 4.3 (Customs Cooperation).

ARTICLE 5.14 : RECORD KEEPING REQUIREMENT

Each Party may require that importers maintain, for up to five years after the date of importation, records relating to the importation of the good, and may require, as stipulated in Article 5.12.2, that an importer provide, upon request, records which are necessary to demonstrate that a good qualifies as an originating good, including records concerning:

- (a) the purchase, cost and value of, and payment for, the good;
- (b) the purchase, cost and value of, and payment for, all materials, including indirect materials, used in the production of the good; and
- (c) the production of the good in the form in which the good was exported.

ARTICLE 5.15 : VERIFICATION

For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, a Party may conduct a verification by means of:

- (a) requests for information from the importer;
- (b) written requests for information to an exporter or a producer in the territory of the other Party;
- (c) requests for the importer to arrange for the producer or exporter to provide information directly to the Party conducting the verification;
- (d) information received directly by the importing Party from an importer as a result of a process described in Article 5.12.2;

243SA(2) [Answering questions under subsection 214AH(2)] A person must not fail to answer a question that a monitoring officer, pursuant to subsection 214AH(2), requires the person to answer, if:

- (a) the person is the occupier of the relevant premises, or a representative of the occupier whom the occupier has nominated to Customs to answer questions under that subsection; or
 - (b) the person is not covered by paragraph (a) and no other person of the kind mentioned in that paragraph is present at the premises and available to answer questions put by the monitoring officer.
- Penalty: 30 penalty units.

History

S 243SA(2) inserted by No 82 of 2002, Sch 3[53], effective 10 October 2002.

243SA(3) [Answering questions under sec 195A] If:

- (a) an officer requires a person to answer a question under section 106J or section 195A; and
 - (b) the officer informs the person of the officer's authority to ask the question; and
 - (c) the officer informs the person that it may be an offence not to answer the question;
- the person must not fail to answer the question.
- Penalty: 30 penalty units.

History

S 243SA(3) amended by No 111 of 2004, s 3, Sch 3, item 7, effective 13 January 2005.

S 243SA(3) inserted by No 111 of 2004, Sch 2[4], effective 10 August 2004.

S 243SA amended by No 82 of 2002, Sch 3[52-53], effective 10 October 2002.

S 243SA inserted by No 95 of 2001, s 3, Sch 2, item 5, effective 1 July 2002.

SECTION 243SB FAILURE TO PRODUCE DOCUMENTS OR RECORDS

243SB A person must not fail to produce a document or record that an officer, pursuant to a power conferred on the officer by this Act other than a power conferred by section 71DA, 71DL, 114A or 118, requires the person to produce.

Penalty: 30 penalty units.

History

S 243SB inserted by No 95 of 2001, s 3, Sch 2, item 5, effective 1 July 2002.

SECTION 243SC PRESERVATION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION

243SC(1) [Circumstances] Subject to subsection (2), a person who would, apart from this subsection, be required to:

- (a) answer a question under section 243SA; or
 - (b) produce a document or record under section 243SB;
- need not comply with the requirement if so complying would:
- (c) tend to incriminate the person; or
 - (d) result in further attempts to obtain evidence that would tend to incriminate the person.

243SC(2) [Exception] Subsection (1) does not apply, and the person must comply with the requirement, if the person has waived his or her rights under that subsection.

History

S 243SC inserted by No 95 of 2001, s 3, Sch 2, item 5, effective 1 July 2002.

SECTION 243T FALSE OR MISLEADING STATEMENTS RESULTING IN LOSS OF DUTY

243T(1) [Circumstances] If:

- (a) a person:
 - (i) makes to an officer a statement (other than a statement in a cargo report or an outturn report), in respect of particular goods, that is false or misleading in a material particular; or
 - (ii) omits from a statement (other than a statement in a cargo report or an outturn report), in respect of particular goods, made to an officer any matter or thing without which the statement is false or misleading in a material particular; and
- (b) either of the following applies:
 - (i) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;
 - (ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil);
 - (iii) (Repealed by No 136 of 2003.)

the owner of the goods (not being a person who is to be treated as the owner of the goods because that person is an agent of the owner) commits an offence.

History

S 243T(1) amended by No 136 of 2003, s 3, Sch 1, Pt 4, item 18-19, effective 14 January 2004.

243T(2) [Strict liability offence] An offence against subsection (1) is an offence of strict liability.

243T(3) [Penalty] The penalty for a conviction for an offence against subsection (1) is an amount not more than the excess.

(a)-(c) (Repealed by No 136 of 2003.)

History

S 243T(3) amended by No 136 of 2003, s 3, Sch 1, Pt 4, item 20-21, effective 14 January 2004.

243T(4) [Exception] Subsection (1) does not apply if:

- (a) a person (other than an officer) voluntarily gives written notice (an error notice) to an officer doing duty in relation to the matter to which the statement relates, indicating that:

- (i) the statement is false or misleading in a material particular; or
 - (ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and
- (b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to:
- (i) the owner of the goods (other than an agent in relation to the goods); or
 - (ii) if the statement was made by an agent of the owner—the agent who made the statement; and
- (c) if subparagraph (1)(b)(i) would apply apart from this subsection—the duty properly payable on the goods is paid in full before either of the following happens:
- (i) an infringement notice is served under Division 5 on the owner of the goods for an offence against subsection (1);
 - (ii) proceedings are commenced against the owner of the goods for an offence against subsection (1); and

(d) if subparagraph (1)(b)(ii) would apply apart from this subsection and an amount of refund or drawback exceeding the amount (if any) properly payable has been paid before the time either of the following happens:

- (i) an infringement notice is served under Division 5 on the owner of the goods for an offence against subsection (1);
- (ii) proceedings are commenced against the owner of the goods for an offence against subsection (1);

the excess has been repaid before that time.

History

S 243T(4) substituted by No 136 of 2003, s 3, Sch 1, Pt 4, item 22, effective 14 January 2004.

243T(4A) [Error notice not given voluntarily] For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:

- (a) an officer exercises a power under a Customs-related law to verify information in the statement; or
- (b) an infringement notice is served under Division 5 on the owner of the goods for an offence against subsection (1); or
- (c) proceedings are commenced against the owner of the goods for an offence against subsection (1).

History

S 243T(4A) inserted by No 136 of 2003, s 3, Sch 1, Pt 4, item 22, effective 14 January 2004.

243T(5) [Uncertainty about information included in statement] Subsection (1) does not apply to a statement made by a person to an officer if:

- (a) the statement specifies that the person is uncertain about information included in the statement, and considers that, as a result of including that information, the statement might be false or misleading in a material particular; and
- (b) the statement identifies the information whose inclusion might make the statement false or misleading in a material particular; and
- (c) the statement sets out the reasons why the person is uncertain about the identified information.

243T(6) [Information omitted from statement] Subsection (1) does not apply to a statement made by a person to an officer if:

- (a) the statement specifies that the person is uncertain whether, as a result of omitting information from the statement, the statement might be false or misleading in a material particular; and
- (b) the statement identifies the omission of information that might make the statement false or misleading in a material particular; and
- (c) the statement sets out the reasons for the person's uncertainty about the effect of omitting the information.

History

S 243T substituted by No 95 of 2001, s 3, Sch 2, item 5, effective 1 July 2002. Item 5A of s 3, Sch 2 of No 95 of 2001 states: "Despite the repeal by item 5 of sections 243T, 243U and 243V of the *Customs Act 1901*, those sections continue to apply in respect of statements made before the repeal."

SECTION 243U FALSE OR MISLEADING STATEMENTS NOT RESULTING IN LOSS OF DUTY

243U(1) [Circumstances] A person commits an offence if:

(a) the person:

- (i) makes, or causes to be made, to an officer a statement (other than a statement in a cargo report or an outturn report) that is false or misleading in a material particular; or
- (ii) omits, or causes to be omitted, from a statement (other than a statement in a cargo report or an outturn report) made to an officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) neither of the following applies:

- (i) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;
- (ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil).
- (iii) (Repealed by No 136 of 2003.)

History

S 243U(1) amended by No 136 of 2003, s 3, Sch 1, Pt 4, item 23-26, effective 14 January 2004.

243U(2) [Strict liability offence] An offence against subsection (1) is an offence of strict liability.

243U(3) [Penalty] The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 50 penalty units for each statement that is found by the court to be false or misleading.

243U(3A) [Person deemed to cause statement to be made] For the purposes of this section, a person is taken to cause to be made a statement (other than a statement in a cargo report or outturn report) that is false or misleading in a material particular if:

- (a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement (other than a statement in a cargo report or outturn report) by the other person or someone else to an officer; and
- (b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause such a statement to be made.

History

S 243U(3A) inserted by No 136 of 2003, s 3, Sch 1, Pt 4, item 27, effective 14 January 2004.

243U(3B) [Person deemed to cause omission to be made] For the purposes of this section, a person is taken to cause to be made an omission (a *punishable omission*) from

Sec 243U(1)

a statement (other than a statement in a cargo report or outturn report) of a matter or thing without which the statement is false or misleading in a material particular, if:

- (a) the person gives to another person, for inclusion in a statement (other than a statement in a cargo report or an outturn report) by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and
- (b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause a punishable omission to be made.

History

S 243U(3B) inserted by No 136 of 2003, s 3, Sch 1, Pt 4, item 27, effective 14 January 2004.

243U(4) [Exception] Subsection (1) does not apply to a statement if:

- (a) a person (other than an officer) voluntarily gives written notice (an **error notice**) to an officer doing duty in relation to the matter to which the statement relates, indicating that:
 - (i) the statement is false or misleading in a material particular; or
 - (ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and
- (b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to either of the following:
 - (i) a person who made the statement or caused it to be made;
 - (ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading.

History

S 243U(4) substituted by No 136 of 2003, s 3, Sch 1, Pt 4, item 28, effective 14 January 2004.

243U(4A) [Error notice not given voluntarily] For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:

- (a) an officer exercises a power under a Customs-related law to verify information in the statement; or
- (b) an infringement notice for an offence against subsection (1) is served under Division 5 on:
 - (i) a person who made the statement or caused it to be made; or
 - (ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading; or
- (c) proceedings are commenced against a person described in subparagraph (b)(i) or (ii) of this subsection for an offence against subsection (1).

History

S 243U(4A) inserted by No 136 of 2003, s 3, Sch 1, Pt 4, item 28, effective 14 January 2004.

243U(5) [Definition] In this section:

statement does not include:

- (a) a statement made under Part XVA or XVB; or
- (b) a statement that a person who is or was a passenger on, or a member of the crew of, a ship or aircraft made in relation to his or her accompanied personal or household effects that were carried on the ship or aircraft.

History
S 243U substituted by No 95 of 2001, s 3, Sch 2, item 5, and 243V of the *Customs Act 1901*; those sections continue to apply in respect of statements made before the repeal.
S 243U substituted by No 95 of 2001, s 3, Sch 2, item 5, and 243V of the *Customs Act 1901*; those sections continue to apply in respect of statements made before the repeal.
Despite the repeal by item 5 of sections 243T, 243U

SECTION 243V FALSE OR MISLEADING STATEMENTS IN CARGO REPORTS OR OUTTURN REPORTS

243V(1) [Circumstance] A person commits an offence if the person:

- (a) makes, or causes to be made, to an officer a statement, in a cargo report or an outturn report, that is false or misleading in a material particular; or
- (b) omits, or causes to be omitted, from a statement, in a cargo report or an outturn report, made to an officer any matter or thing without which the statement is false or misleading in a material particular.

History

S 243V(1) amended by No 136 of 2003, s 3, Sch 1, Pt 4, item 29-30, effective 14 January 2004.

243V(2) [Strict liability offence] An offence against subsection (1) is an offence of strict liability.

243V(3) [Penalty] The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 50 penalty units.

243V(4) [Person deemed to cause statement to be made] For the purposes of subsection (1), a person is taken to cause to be made a statement described in paragraph (1)(a) if:

- (a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement, in a cargo report or an outturn report, by the other person or someone else to an officer; and
- (b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

This subsection does not limit the ways in which a person may cause to be made a statement described in paragraph (1)(a).

History

S 243V(4) inserted by No 136 of 2003, s 3, Sch 1, Pt 4, item 31, effective 14 January 2004.

243V(5) [Person deemed to cause omission to be made] For the purposes of subsection (1), a person is taken to cause an omission described in paragraph (1)(b) to be made if:

- (a) the person gives to another person, for inclusion in a statement, in a cargo report or an outturn report, by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and
- (b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

Sec 243V(1)