



Ottawa, August 8, 2013

MEMORANDUM D13-11-6

In Brief

DETERMINING VALUE FOR DUTY OF COMPUTER SOFTWARE

The editing revisions made in this memorandum do not affect or change any of the existing policies or procedures.





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This memorandum provides guidelines and examples for determining the value for duty on computer software.

Legislation

Sections 44 to 55 of the *Customs Act*:
<http://laws-lois.justice.gc.ca/eng/acts/C-52.6/index.html>.

GUIDELINES AND GENERAL INFORMATION

1. Under the *Computer Carrier Media Remission Order*, customs duty is not to be assessed on the value of the instructions or data content. However, any applicable customs duty will apply on the value of the carrier medium (for example, disk or tape) and the cost of reproducing the instructions or data onto the medium.
2. The above-mentioned Remission Order states Canada's position regarding a 1984 decision made by the General Agreement on Tariffs and Trade (GATT) Committee on Customs Valuation. Signatory countries to the GATT Valuation Agreement have the option to value computer software based on its carrier medium alone.
3. The GATT decision and the Remission Order do not consider the applicability of the goods and services tax (GST). The GST is payable on the full value for duty of the software package (i.e., disk and program) upon importation.
4. In most cases, the valuation of computer software will not be difficult. The value for duty of software that has been sold will be determined using the transaction value method.
5. There are circumstances where the transaction value method may not be appropriate. This can occur when the importation does not result in the sale of the software, or when the software developer retains ownership of the software and charges a licence fee. In such cases, refer to the following sections for guidance on the determination of the value for duty.

Prepackaged Software

6. The most common importation results from the sale of off-the-shelf, pre-packaged computer software. These importations involve a transfer of ownership with the applicable licence fees usually "bundled" into the selling price. In such cases, the transaction value method applies.

The value for duty is based on the price paid or payable for the software in the sale for export to Canada to a purchaser in Canada. For more information, refer to Memorandum D13-4-1, *Transaction Value Method of Valuation*.

7. It should be noted that where a sale has occurred, the price paid or payable is based on the actual amount paid or payable and not on price lists from other sources. For example, if a particular software package normally sells for \$200, but the same package is purchased from a discount outlet for \$75, the value for duty should be based on the \$75 price.

Custom-made Software

8. The transaction value method also applies in the sale of custom-made software designed specifically for one or a limited number of purchasers. In this case, the purchaser receives ownership and obtains the right to use the software. The value for duty is based on the price paid or payable for the software in the export sale to Canada.

9. Copies of computer software, usually custom-designed, may be provided under a licence agreement for an initial "up front" charge with an ongoing fee for use. In such cases, ownership and control of the software may not be transferred to the receiving party. In other words, there is no sale. In most of these cases, a licence or lease fee is paid to the owner for the right to use the software for an agreed period. The transaction value method does not apply in this situation as there is no transfer of ownership and a sale has not occurred.

10. Subsequent methods of valuation may not be applicable. It is not likely that there are sales of identical or similar goods to Canada. A deductive value cannot be determined without a sale of the goods, or identical or similar goods, in Canada. The absence of sales to Canada also affects the ability to determine a profit and general expense figure under the computed value method.

11. Therefore, the Canada Border Services Agency (CBSA) will continue to abide by the principles of the GATT decision on carrier media-bearing software, as well as the principles embodied in Memorandum D8-3-15, *Computer Carrier Media Remission Order*, and Memorandum D13-11-2, *Value for Duty of Certain Information-based Products*. The valuation of licensed or leased software for which a sale does not exist will be based on the value of the carrier medium and the cost of reproducing the instructions or data onto the medium.

Update Disks

Charge for Update Disks

12. The transaction value method will continue to apply if the importation of update disks is a result of a sale. For example, the vendor charges the purchaser \$1,000 for the original software package and charges \$100 for each update disk. The value for duty of each update disk is based on the \$100 price, and would be subject to the adjustments identified in subsection 48(5) of the *Customs Act*.

Free Updates – Original Package

13. Update disks may also be provided to the purchaser free of charge under the original terms of sale or licence agreement. Therefore, the value of the update disk has been included in the value of the original package. If such an arrangement can be shown to exist, the value for duty of the update disk will be \$0.00 and no assessment of customs duty and GST will be made.

14. For example, the vendor charges the purchaser \$1,000 for the original software package. The terms of sale or licence agreement are such that the \$1,000 price includes update disks to be provided to the purchaser. Under the transaction value method, the value for duty of the original package is based on the price paid of \$1,000. The value of the update disk is included in the price of the original package.

Free Updates – Annual Fee

15. If update disks are supplied free of charge to a consignee who either periodically pays a fee to the supplier, or pays dues in return for club membership, these amounts would form the basis for calculating the value for duty of the disks. The total amount (dues or fees) would be applied to the value of the first disk. Additional disks imported during the year would be valued in the same manner as explained in paragraph 13.

Promotional Copies

16. As the importation of promotional disks does not involve a sale, the transaction value method cannot be used. In such cases, based on the principles of the GATT decision on the valuation of computer software, the value of the copy will be determined according to Memorandum D13-11-2. The value for duty of such software would be based on the value of the physical medium, for example the disk or tape, and the cost of transcribing the information onto the medium.

Test Versions

17. Test versions of upcoming software releases, sometimes referred to in the industry as beta versions, may be imported into Canada. These importations may occur for quality control or for product evaluation.

18. If the test versions are sold, the transaction value method will be applicable. If they are imported free of charge, another valuation method will apply. In other words, the value for duty will be based on the value of the physical medium, that is, the disk or tape, and the cost of transcribing the information onto the medium.

Goods and Services Tax (GST)

19. The goods and services tax (GST), to the extent that it has been charged by the vendor, is not to be included in the price paid or payable for the purposes of determining the value for duty of imported goods.

20. While the GST is payable only on the medium value at the time of importation in the foregoing circumstances, it is possible that the GST may be payable on the licence fees according to other provisions of the GST legislation. The Canada Revenue Agency (CRA) Technical Information Bulletin B-037R, *Imported Computer Software*, addresses this issue.

Additional Information

21. For more information, call contact the [CBSA Border Information Service](#) (BIS):

Calls within Canada & the United States (toll free):
1-800-461-9999

Calls outside Canada & the United States (long distance charges apply):
1-204-983-3550 or 1-506-636-5064

TTY: **1-866-335-3237**

[Contact Us online](#) (webform)
[Contact Us](#) at the CBSA website.

REFERENCES

<p>ISSUING OFFICE – Trade Programs Directorate</p>	<p>HEADQUARTERS FILE – 79070-4-9</p>
<p>LEGISLATIVE REFERENCES – <i>Customs Act</i> <i>Computer Carrier Media Remission Order</i></p>	<p>OTHER REFERENCES – D8-3-15, D13-4-1, D13-11-2 Bulletin B-037R</p>
<p>SUPERSEDED MEMORANDA “D” – D13-11-6, April 17, 2001</p>	

Services provided by the Canada Border Services Agency are available in both official languages.



Printed in Canada