

International Chamber of Commerce releases 2020 update to its standardized international trade terms

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The International Chamber of Commerce (ICC) recently released the 2020 update to its standardized international trade terms (Incoterms 2020). Incoterms 2020 builds on the most recent version of the standardized terms released 10 years ago (Incoterms 2010).

Generally, the Incoterms are a set of standardized trade terms that can be incorporated directly into contracts and address the delivery of goods. They set out where delivery takes place, where risk transfers, and which party is responsible for arranging carriage and insurance. Certain of the terms, such as "Free on Board" (FOB) are specifically designated as maritime terms and can only truly apply where goods are delivered by ship.^[1] Others, such as "Carriage Paid to" (CPT) are more general and can apply to any form of transportation. In addition to having important consequences for the commercial terms of a transaction, the Incoterms can have important tax consequences because delivery for Canadian sales tax purposes is where the goods are delivered or made available, and tends to be in the same place as where delivery occurs under the Incoterm or other delivery term that is used.

The key substantive changes from the Incoterms 2010 to 2020 include the following:

- The term "delivered at terminal" (DAT) has been replaced by "delivered at place unloaded" (DPU). While the new term expands the concept of a "terminal" to a "place," it is otherwise substantively the same;
- The levels of insurance coverage required under certain of the terms have changed;
- Certain of the terms have been expanded to include situations where buyers and sellers arrange their own carriage of goods rather than contracting carriage to third parties; and
- The terms now make express provision for which party must bear security-related obligations and costs.

Otherwise, the changes are largely cosmetic, such as the addition of explanatory notes and "a greater emphasis...on making the right choice." While such changes may seem insignificant, it is important to note that the ICC regards "the most important initiative behind the Incoterms 2020 rules" to be "to focus on how the presentation could be enhanced to steer users towards the right Incoterms." Elsewhere in the introduction to the new rules, they note a "frequent misuse of the wrong Incoterms rule." Thus, it would appear that the ICC has arranged its new rules specifically with a view to better explaining them out of a concern that they are currently being misunderstood and misapplied.

Based on our experience, we agree that Incoterms are frequently misunderstood and misapplied. The release of Incoterms 2020 provides an opportunity for enterprises of all kinds to reconsider the trade terms they use and why they use them, in order to ensure that the trade terms chosen give effect to the intended consequences from both a commercial and a tax perspective.

[1] It should be noted that “FOB, Incoterms 2020” is different from “FOB” as set out in the *US Uniform Commercial Code* (UCC). Under the UCC, the term FOB is not necessarily a maritime term and can be accompanied by either a named place of shipment or of destination, with specific consequences for the responsibilities of the seller.