



Mining and Energy Industry Partnership – issues register

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

All references to the 'GST Act' are referring to the *A New Tax System (Goods and Services Tax) Act 1999*.

Chapter 1. Demurrage and dispatch

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

Chapter 2. Export of goods

Non-interpretative - straight application of the law.

Overview

This chapter focuses on the GST implications of exports with regard to the Mining and Energy Industries.

Export requirements

Goods for export are treated as having been exported from Australia if they meet these five requirements:

1. before the goods are exported, the supplier supplies them to an entity that is [not registered or required to be registered](#)
2. that entity exports the goods from Australia
3. the goods have been entered for export within the meaning of [section 113 of the Customs Act 1901](#)

4. since their supply to that entity, the goods have not been altered or used in any way, except to the extent (if any) necessary to prepare them for export, and
5. the supplier has [sufficient documentary evidence](#) to show that the goods were exported.

However, if the goods are re-imported into Australia, the supply is not GST-free unless the re-importation is a taxable importation.

Entities not registered or required to be registered

In accordance with paragraph 38-185(3)(a) of the GST Act, the supplier must supply the goods to an entity that is not registered or required to be registered. It is generally accepted by Industry that the supplier should be able to ascertain that an entity (customer) is not registered at the time of supply (by searching the Australian Business Register for the appropriate ABN). However, Industry believe that from a practical point of view, it would be difficult for the supplier to ascertain at the time of supply whether a customer who is not registered may be required to be registered.

A supplier will be treated as having met this test, if at the time of supply, the supplier has reasonable grounds for believing that the customer is not required to be registered. It may be appropriate for the Australian supplier to obtain some notification to the effect that the non-resident is not registered and also that they do not make supplies connected with Australia.

A statement or knowledge to the effect that the non-resident does not make supplies connected with Australia will generally be sufficient for the Australian supplier to be satisfied that the non-resident is not required to be registered.

Meaning of section 113 of the Customs Act 1901

The owner of the goods intended for export must enter the goods for export and where an export entry is made to Customs; Customs must give the owner/exporter an export entry clearance number. This constitutes part of the process of exportation.

Suitable documentary evidence of export

The supplier must maintain sufficient documentary evidence of the exportation of the goods by the entity/exporter of the supply. Sufficient documentary evidence may include a combination of the following:

- a copy of the sales invoice or purchase contract that identifies the goods for export and the entity (in this case the recipient)
- a copy of the bill of lading which is evidence of a contract of carriage as well as proof of delivery of the goods on board a vessel
- a copy of the airway bill
- evidence from the Australian Customs Service that the goods were exported, and
- evidence from the customs authority of the country to which the goods were exported that the goods arrived in that country from Australia.

When does an export take place?

There is no definition of 'export' contained within the GST legislation which establishes a precise time when goods have been exported. However, for Customs purposes, goods are taken to be exported when the vessel has been cleared to leave the **final** port of loading.

This information would normally be conveyed to the exporter on the bill of lading prepared by the shipping company.

In this regard, it should be noted that the issuing of an export clearance number to the exporter alone **does not mean** that the vessel has received permission to depart.

Diversions of exported goods

The issue of diversions relates to the situation where goods are loaded and cleared for export at the final port of loading but, prior to the goods being carried or sent out of Australia, are on-sold by the entity to another entity in Australia. Specifically, Industry has asked whether or not these will be treated as exports and, if not, who will be responsible for the GST.

According to Customs, the goods would be treated as a re-importation. Specifically, the ship owner/operator is required to declare the cargo by way of an inwards manifest. In order to obtain the goods from the wharf, the new purchaser would have to obtain a Customs clearance and would need to lodge further documentation with customs. Part of this documentation would be used to determine if the goods are a taxable importation for GST purposes. Under sub-section 38-185(3), a supplier will only be liable for the GST on the exportation of goods, if the re-importation is **not** a taxable importation.

Chapter 3. Joint venture issues

Overview

This chapter provides the ATO view on various joint venture issues within the Mining and Energy Industries.

Underlifts/overlifts within a GST Joint venture

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

Joint venture net amounts

Non-interpretative - straight application of the law.

What is a net amount?

The net amount relating to a joint venture is the sum of all the GST for which the joint venture is liable, less the sum of all the input tax credits to which the joint venture is entitled, for that particular tax period.

One GST joint venture return

One GST return will contain the net amount of all the joint venture participants' activities, including the operator's joint venture activities if the operator is also a participant in the joint venture.

If the joint venture operator is not a participant in the joint venture, then the GST joint venture return would not include the joint venture operator's net amount. The joint venture return would only include the net amount relating to the participants' activities in the joint venture (section 51-45 of the GST Act).

Additional net amounts

Section 51-50 of the GST Act requires the joint venture operator, on behalf of the joint venture, to submit a GST return to the ATO each tax period. The GST return must state the net amount relating to the joint venture (subsection 51-50(2) of the GST Act).

Therefore, if the joint venture operator is also a participant of the joint venture, then the net amount of the joint venture would include the net amount of the operator's joint venture activities (sections 17-5 and 51-50 of the GST Act) as well as the additional net amounts of the other participants (section 51-45 of the GST Act).

Note:

The joint venture operator and the other participants will also submit their own GST returns in relation to their activities outside the joint venture (section 31-5 of the GST Act).

Operators with multiple joint ventures

Single GST return

Section 51-52 of the GST Act allows the operator of multiple joint ventures to elect to lodge one GST return in respect of all the joint ventures for which it is the operator.

To make this election, the joint venture operator must notify the Commissioner of Taxation in the approved form. To withdraw the election, the joint venture operator must also notify the Commissioner in the approved form. However, the Commissioner may disallow the election if he or she is satisfied that the operator has a history of failing to comply with its obligations as a joint venture operator or in any other capacity under a taxation law. (Disallowance of the election is a reviewable decision under the *Tax Administration Act 1953*.)

The net amount for the consolidated GST return will be calculated by aggregating the net amounts of each joint venture. Negative and positive net amounts of the individual joint ventures will be offset against each other to reach the aggregated net amount (whether positive or negative) for the consolidated return.

Chapter 4. Agency/principal issues and joint ventures

Non-interpretative - straight application of the law.

Overview

This chapter provides the ATO view on Agency Principal issues and joint ventures within the Mining and Energy Industries.

Background

Inherent in a joint venture operator's responsibilities is the making of supplies and acquisitions on behalf of the participants. In making these supplies and acquisitions, the joint venture operator may act as principal or agent.

The exact legal relationship between operators, participants and third parties may not be clear, but it appears that in most cases the operator will be acting as agent of the participant.

Under the GST Act, a joint venture is either a GST joint venture pursuant to Division 51 or it is not a GST joint venture. If the joint venture is not a GST joint venture then sections 51-30 and 51-35 have no application. Instead, the basic rules set out in Chapter 2 of the GST Act will apply.

1. GST joint venture

If a joint venture is a GST joint venture under Division 51 then sections 51-30 and 51-35 of the GST Act apply. These sections provide for a number of consequences that follow from the formation of a GST joint venture.

The first is that the joint venture operator is liable for the GST payable on taxable supplies it makes on behalf of a participant in the course of joint venture activities.

Secondly, a supply made from the joint venture operator to a participant is not a taxable supply if the participant acquired the thing supplied in the course of activities for which the joint venture was entered into.

Finally, the joint venture operator is entitled to the input tax credit for creditable acquisitions it makes on behalf of a participant in the course of the activities of the joint venture.

2. No GST joint venture

Where there is no GST joint venture the basic rules apply.

The operator of a joint venture, which is not a GST joint venture, will need to ascertain whether or not it is acting as agent or principal for each supply and acquisition it makes on behalf of the participants in order to ascertain whether GST is payable or whether it is entitled to input tax credits.

The operator of a joint venture, that is not a GST joint venture, would not be able to assume that it always contracts as principal.

Chapter 5. Contracts

Overview

This chapter discloses the ATO view on various Mining and Energy contract issues.

Free of charge transactions within mining operations

For source of ATO view, refer to general application of the principles in [GSTR 2006/9](#) - *Goods and services tax: supplies*.

Background

A mining company may employ the services of a contractor to carry out work at a mine site. The contract between the mining company and the contractor will typically set out the type of services to be performed and the rate at which the contractor is to be paid.

In order to carry out the contracted work, the contractor will, from time to time, need to use materials and equipment of **incidental value** supplied by the mining company such as mine site stationery, electricity for powering computers, safety equipment such as ear

plugs and telecommunications equipment. **Typically, these are goods and services that are difficult to value and are of a very low monetary value.**

Not a taxable supply

Where the costs of supplying these materials and equipment by the mining company to the contractor are not detailed in any form in the contract and no value is ascribed to this type of supply, as no consideration is provided, the supply will not be a taxable supply for the purposes of section 9-5 of the GST Act.

A taxable supply

Where the cost of supplying incidental materials or equipment by the mining company to the contractor is detailed in any form in the contract, or a value is ascribed, or any contra invoice, back charge or separate charge is made, which reduces the contracted payment, the supply will be a taxable supply for the purposes of section 9-5 of the GST Act.

Where goods and services, that are not of incidental value (difficult to value and of a very low monetary value), are supplied and are not mentioned in contracts, the normal rules will apply. These supplies will be treated as non-cash consideration transactions or barter exchanges. That is, they will be taxable supplies and will be valued in accordance with paragraph 9-75(1)(b) of the GST Act (market value).

Coal loans and borrows

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

Refinery exchange and borrow and loan transactions

What are refinery exchange transactions?

This is a reciprocal arrangement between oil companies where companies make product available to one another on the understanding that it will be replaced by like product.

What are borrow and loan transactions?

This is where a company with bulk handling and storage facilities at a particular location enters into an arrangement to store, for subsequent withdrawal, another company's product.

Taxable supplies

For both refinery exchange transactions and borrow and loan transactions, the supply of product will be taxable.

Valuation of taxable supplies

With the agreement of industry, the method of calculating the value (GST exclusive) will be based on an international valuation used in the oil industry called 'Mean of Platts Singapore' or 'MOPS'.

Tax invoices

Each oil company making a supply to another oil company (whether refinery exchange or borrow and loan) will issue the recipient company a tax invoice showing the total product supplied, valued at 'MOPS', and the GST amount. This tax invoice would be a summary of all the taxable supplies made by one company to another company during the month.

Chapter 6. GST deferral scheme

For source of ATO view, refer to paragraphs 283-288 of [GSTR 2003/15](#) - *Goods and services tax: importation of goods into Australia*.

Overview

This chapter describes how the GST Deferral scheme (DGST) will apply to the Mining and Energy Industries.

Background

The Deferred GST Scheme provides for GST to be deferred until the first business activity statement (BAS) is due after the goods are entered for home consumption. These arrangements are designed to put importers on an equal footing, in regard to the payment of GST by a registered business on imported goods, compared with goods obtained locally.

Scope of the scheme

Deferral of GST on imported goods will extend to all importations that are entered for home consumption. (Nature 10 and Nature 30 entries). Goods imported under the TRADEX scheme that are diverted into home consumption are excluded from the scheme. Low value imports cleared on informal clearance documents will also be excluded.

Who is eligible to defer GST?

Importers will only be eligible to defer GST if they:

- have an Australian business number (ABN)
- are registered for the GST
- lodge their BAS monthly, via the internet-based, e-commerce system operated by the Australian Taxation Office (ATO)
- pay their BAS liabilities electronically
- deal with Customs electronically
- as a general rule, do not have any debt or returns outstanding with the ATO, and
- have received approval in writing from the ATO to defer payment of GST.

How will the GST deferral scheme operate?

After 1 July 2000, importers will quote their Australian business number to Customs when they enter goods for home consumption.

If the importer has been given approval to defer GST, Customs will release the goods after payment of any customs duty or other charges. Customs will record the deferred GST liability of each shipment as it is cleared.

At the end of each month, Customs will advise the ATO of the total deferred GST liability for each importer who deferred GST.

The ATO will include the amount of deferred GST on the BAS before it is issued to the Joint Venture Operator, Group representative or individual entity as the case may be. In this way, the amount of deferred GST liability is included in the calculation of net liability in the BAS for the month.

The BAS must be lodged with the ATO within 21 days from the end of the month. Importers will be able to offset the deferred GST liability by claiming an input tax credit to the extent that the imported goods are used in carrying on an enterprise.

Need more information?

Further information is available on the Customs website homeaffairs.gov.au. Details of the arrangements can be obtained by contacting the Deferred GST Scheme Helpline **1300 130 915**.

Application to participate in the scheme

Importers can apply to participate online at ato.gov.au

Chapter 7. Precious metals

For source of ATO view, refer to paragraph 24 of [GSTR 2003/10](#) - *Goods and services tax: What is 'precious metal' for the purposes of GST?*

Overview

This chapter describes how the GST will apply to precious metals.

Gold, silver and platinum granules

Precious metal

Precious metal is defined at section 195-1 of the GST Act to mean:

- gold (in an investment form) of at least 99.5% fineness
- silver (in an investment form) of at least 99.9% fineness
- platinum (in an investment form) of at least 99% fineness, or
- any other substance (in an investment form) specified in the regulations of a particular fineness specified in the regulations.

Investment form

- Gold in granular form is not gold in 'an investment form'.
- Silver in granular form is not silver in 'an investment form'.
- Platinum in granular form is not platinum in 'an investment form'.

Taxable supply

Gold granules, silver granules and platinum granules are not considered to be a 'precious metal' for the purposes of the GST legislation and therefore will be subject to GST.

Chapter 8. Precious metal refining

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found [here](#).

Chapter 9. Currency conversions

For the source of ATO view, refer to paragraph 20 of [GSTR 2001/2](#) - *Goods and Services Tax: foreign exchange conversions*.

Note:

The value of a taxable supply is to be expressed in Australian currency.

Chapter 10. Fly ins and fly outs

For source of ATO view, refer to [GSTR 2012/6](#) - *Goods and services tax: commercial residential premises*.

Accommodation: Fly ins and fly outs

What is fly in and fly out accommodation?

Many remote sites operate on a fly in and fly out basis with a two or three-week work period (shift). Temporary accommodation, in the form of Single Person's Quarters (SPQs), is provided to employees and contractors for the shift period. At the conclusion of the shift, the employees and contractors are transported from the site, usually by aircraft. No charges are levied to the employee or contractor for the air travel.

ATO view on fly ins and fly outs (also known as 'camp-style' accommodation).

Refer to Paragraphs 75 and 76 of [GSTR 2012/6](#).

Chapter 11. Supply of going concerns: farm ins and farm outs

For source of ATO view, refer to

- [MT 2012/1](#) - *Miscellaneous taxes: application of the income tax and GST laws to immediate transfer farm-out arrangements*, and
- [MT 2012/2](#) - *Miscellaneous taxes: application of the income tax and GST laws to deferred transfer farm-out arrangements*.

What are farm ins and farm outs?

An entity owns a licence to explore for minerals in a particular geographical area- a 'Tenement'. The licence is essentially a right to explore or mine minerals in a particular geographical area.

The effect of a farm out is that the tenement owner (T1) supplies a right for the other entity (T2) to explore or mine the land at their expense (T1 is farming out to T2, or T2 is farming in to T1's tenement). The licence holder would not normally expend or receive any money for the farm out.

Industry arguments

Industry argues that the supply of an interest in a tenement is a going concern under Subdivision 38J of the GST Act.

ATO view

The ATO view on GST and going concern in this situation is expressed in [MT 2012/1](#) and [MT 2012/2](#).

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