GSTD 2005/D3 - Goods and services tax: does an Australian repairer make a taxable supply when it supplies repair services under a warranty given by a non-resident manufacturer?

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Generated on: 28 November 2026, 03:36:58 AM

Draft Goods and Services Tax Determination

Goods and services tax: does an Australian repairer make a taxable supply when it supplies repair services under a warranty given by a non-resident manufacturer?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling or advice for the purposes of section 37 of the ***Taxation Administration Act 1953****. The final Determination will be a public ruling for the purposes of section 37 and may be relied upon by any entity to which it applies.*

1. Yes. If you supply repair services to a non-resident:

- who is not in Australia when the repairs are done;
- who acquires the services in carrying on its enterprise, but who is not registered or required to be registered; and
- the supply is provided, or is required to be provided under an agreement between the supplier and the non-resident manufacturer, to another entity in Australia,

then subsection 38-190(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) applies and the supply is not GST-free under item 2 in the table in subsection 38-190(1) of the GST Act. The supply is a taxable supply if the requirements of section 9-5 of the GST Act are met.

Background

2. Non-resident manufacturers supplying goods in Australia commonly supply them either to a distributor for subsequent supply to the customer directly or through a dealer network. Alternatively, a manufacturer may supply the goods directly to customers in Australia. Goods supplied through a distributor to customers in Australia may come with a warranty from the distributor or with a warranty from the manufacturer. Goods supplied by a manufacturer directly to customers in Australia may be supplied with a warranty from the manufacturer.

3. The treatment of repairs under warranty from the manufacturer depends on the arrangements between the manufacturer, the distributor or customer, and a third party repairer, if any. This Determination considers whether an Australian repairer makes a taxable supply when it supplies repair services pursuant to a warranty given by the non-resident manufacturer to the customer. The attached diagram illustrates supplies and payments between parties where the repairer is engaged by the non-resident manufacturer to make the repairs, and where the customer has a warranty from the non-resident manufacturer. The treatment of a payment made from a non-resident manufacturer to an Australian distributor under a warranty where there is an arrangement for repairs between a manufacturer and a distributor, and sometimes, a third party repairer, is considered in Goods and Tax Determination GSTD 2005/D2.

Previous Rulings

4. The subject of this draft Determination was considered in Example 20 of draft Goods and Services Tax Ruling GSTR 2003/D7 Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 of the table in subsection 38-190(1) of the GST Act. This draft Determination replaces Example 20.

Explanation

5. The non-resident manufacturer by its warranty to the customer is obliged to that person to repair any defect in the goods that is covered by the warranty. If the non-resident has no presence in Australia through which it is capable of making the repairs, the goods either will have to be sent offshore to be repaired, or will have to be repaired in Australia. If the non-resident manufacturer engages a repairer in Australia, then the repairer makes a supply of repair services to the non-resident manufacturer.

6. If the supply of the repair services to the non-resident manufacturer satisfies the requirements of section 9-5 of the GST Act, the supply is a taxable supply. However, if the non-resident manufacturer is not in Australia when the repair services are done, and if the manufacturer acquires the services in carrying on its enterprise, but is not registered or required to be registered, the supply of the repair services is GST-free under item 2 in the table in subsection 38-190(1) of the GST Act, unless subsection 38-190(3) applies.

7. Under the agreement between the non-resident manufacturer and the Australian repairer, the Australian repairer will perform repairs that the non-resident manufacturer is obliged to make under its warranty with its customers.

8. In supplying these repair services to the non-resident manufacturer, the Australian repairer's actions repair the customer's goods. The actual flow of the supply is to the customer. The Australian repairer provides the repair services to an entity in Australia – the customer.

9. Accordingly, subsection 38-190(3) of the GST Act applies and the supply is not GST-free under item 2 of the table in subsection 38-190(1) because the supply is provided to another entity in Australia. The supply will be a taxable supply if the other requirements of section 9-5 of the GST Act are satisfied.[1]

[1] It does not matter if the supply of repair services is a composite supply of repair services with the supply of replacement parts being ancillary to the taxable services of repair or a mixed supply of goods and the services of repairs because in the latter case both parts of the supply would be taxable. See GSTR 2001/8 about apportioning the consideration for a supply that includes taxable and non-taxable parts.

Example: Repairs made when there is only a warranty from the non-resident manufacturer to the customer

10. NRElectric, a manufacturer of electrical equipment, has no presence in Australia and is not registered or required to be registered for GST. NRElectric gives a warranty with the electrical goods it makes that are sold in Australia. Oz Co is registered for GST and carries on an enterprise as a repairer of electrical equipment. The parties are not grouped for GST purposes.[2] Oz Co has an agreement with NRElectric to carry out the repairs that fall within the terms of the warranty NRElectric gives to the customers who purchase the goods it makes. Oz Co does not sell or distribute NRElectric's products in Australia; it is a repairer only. Australian purchasers of electrical goods made by NRElectric take defective goods to Oz Co for repair. Oz Co directly bills NRElectric for the repair services it carries out that are covered by NRElectric's warranty. No charge is made by Oz Co to the Australian customer if the repairs fall under NRElectric's warranty.

11. There is a supply of repair services by Oz Co to NRElectric under an agreement between NRElectric and Oz Co. The agreement is that Oz Co will perform repairs that fall within the terms of the warranty NRElectric gives to customers who buy the goods it makes. The supply is made to NRElectric, but the services are carried out in Australia on the Australian customer's goods. The thing the subject of the supply is the repair of the goods owned by the Australian customer. The actual flow of the repair services is to the customer. The supply of repair services is provided to another entity in Australia – the customer.

12. Although the supply of the repair services meets the requirements of item 2 in the table in subsection 38-190(1) of the GST Act, the supply is not GST-free under that item because subsection 38-190(3) applies. The supply is a taxable supply for GST purposes as the requirements of section 9-5 of the GST Act are satisfied.

Date of effect

13. This draft Determination represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Determination is officially released, it will explain our view of the law as it applies from 1 July 2000.

14. The final Determination will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* and may be relied upon, after it is issued, by any entity to which it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

15. If the final public ruling conflicts with a previous private ruling that you have obtained, the public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of the final public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

[2] GST is generally not payable on supplies made within a GST group of entities: see sections 48-40 and 48-50 of the GST Act. Also, NRElectric and Oz Co cannot group for GST purposes as NRElectric is not registered (paragraph 48-10(1)(c) of the GST Act).

Your comments

16. We invite you to comment on this draft Goods and Services Tax Determination. Please forward your comments to the contact officer by the due date.

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Commissioner of Taxation
1 June 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2001/8; GSTR 2003/D7; GSTD 2005/D2

Subject references:

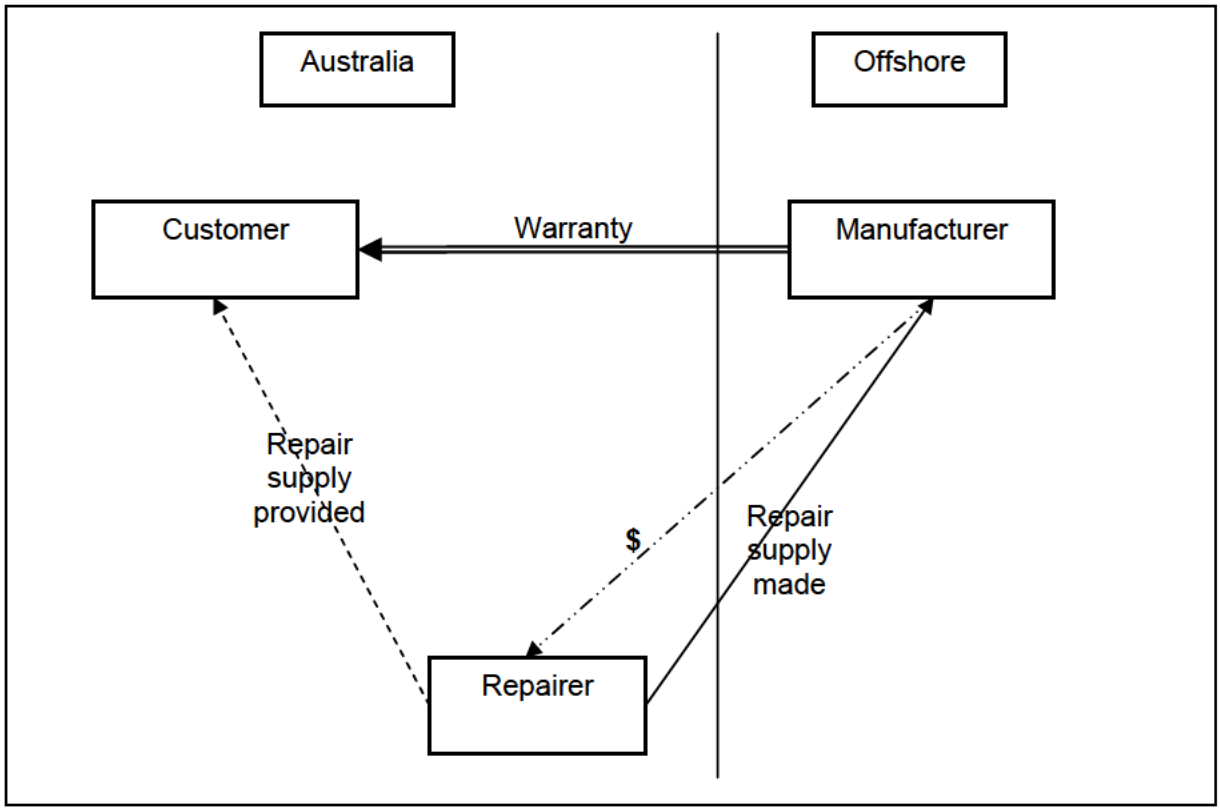
- Australia
- carrying on a business
- consumption outside Australia
- GST-free
- GST-free supplies
- international
- non-resident
- not in Australia
- recipient
- registered
- required to be registered
- services
- supplier
- supplies of things other than goods or real property
- taxable supplies

Legislative references:

- ANTS(GST)A99 9-5
- ANTS(GST)A99 38-190(1)
- ANTS(GST)A99 38-190(3)
- ANTS(GST)A99 48-10(1)(c)
- ANTS(GST)A99 48-40
- ANTS(GST)A99 48-50
- TAA 1953 37

ATO references
NO: 2004/8216
ISSN: 1443-5179
ATOlaw topic: Goods and Services Tax ~~ International services ~~ other

Attachment


Australia
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