GSTD 2006/2 - Goods and services tax: does an Australian entity make a taxable supply when it supplies repair services under a warranty given by a non-resident manufacturer?

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Goods and Services Tax Determination

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

Preamble

This document is a ruling for the purposes of section 37 of the ***Taxation Administration Act 1953****. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

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 cars and other goods to Australia commonly supply them either to a resident distributor for subsequent supply to customers directly or through a dealer network. Alternatively, manufacturers may supply the goods directly to customers in Australia. Goods supplied by a distributor in Australia may come with a warranty from the distributor and/or with a warranty from the manufacturer. Goods supplied by a non-resident manufacturer directly 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, the customer, and a third party repairer, if any. This Determination considers whether an Australian entity, which may be a distributor of the goods or a third party, makes a taxable supply when it supplies repair services pursuant to a warranty given by the non-resident manufacturer in respect of the goods. This entity is referred to as the repairer in this Determination.

4. This Determination does not apply to a supply of goods; nor does it apply to a supply of goods and services in which the services are only incidental to the supply of the goods (such that the supply is a composite supply of goods[1]). The attached diagram illustrates supplies and payments between parties where the non-resident manufacturer has given a warranty in respect of the goods, and where the repairer is engaged by the non-resident manufacturer to make the repairs under that warranty.

5. A non-resident manufacturer may also make a payment to an Australian distributor under an arrangement where the repairs are effected under a warranty that is given to the customer by the Australian distributor as opposed to the non-resident manufacturer. This arrangement is considered in Goods and Services Tax Determination GSTD 2006/1.

Explanation

6. The non-resident manufacturer by its warranty is obliged 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 an entity in Australia to undertake the repairs, then that entity makes a supply of repair services to the non-resident manufacturer. This is so regardless of whether the entity actually performs the repair service itself or engages another entity to perform the repairs. For example, while the non-resident manufacturer may engage a distributor to repair goods that are subject to the non-resident manufacturer's warranty, the distributor, under separate arrangements, may have its dealers perform the repairs for efficiency purposes.

7. 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,[2] 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.[3]

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[1] See GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.

[2] The issue of when an entity is 'in Australia' is discussed in GSTR 2004/7 Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*:

- when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'?
- when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?

[3] The application of subsection 38-190(3) is discussed in GSTR 2005/6 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 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

8. 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 to the goods warranted. In most circumstances the entity that takes the goods in for repair is the customer that purchased the goods from the non-resident manufacturer, distributor or dealer network. However, in some circumstances the entity using the goods when a repair becomes necessary may not be the entity that originally purchased the goods. For example, if goods are re-sold by the original purchaser but remain subject to the terms of the warranty, the new owner has rights under the warranty and is a customer of the manufacturer in that respect. Similarly, if goods acquired by an entity from the non-resident manufacturer are subsequently leased, it may be the lessor or the lessee that takes the goods in for repair depending on the arrangements under the lease.

9. The Australian repairer's supply of repair services to the non-resident manufacturer is the supply of repairing the goods so they can continue to be used. The supply of repair services is therefore provided to the entity using the goods. Unless circumstances indicate otherwise, the entity that takes the goods for repair is regarded as the entity that is using the goods. This is the entity to which the supply is provided. The actual flow of the supply is to this entity.[4] The Australian repairer provides the repair services to this entity in Australia.

10. 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, although the supply is made to the non-resident manufacturer, it 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.[5]

Example 1: Repairs made when there is only a warranty from the non-resident manufacturer to the customer

11. *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 associates or grouped for GST purposes. Oz Co has an agreement with NRElectric to carry out the repairs that fall within the terms of the warranty NRElectric gives in respect of the goods it makes. Oz Co does not sell or distribute NRElectric's products in Australia; it is a repairer only. Electrical goods made by NRElectric are subsequently taken to Oz Co for repair when defective. 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.*

[4] The concepts of the actual flow and contractual flow of a supply are discussed in GSTR 2005/6.

[5] 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.

12. *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 in respect of the electrical goods it makes. The supply is made to NRElectric, but the services are carried out in Australia on the Australian customer's electrical goods. The supply is the repair of the electrical goods brought to Oz Co by the Australian customer. The actual flow of the repair services is to this entity. The repair services supplied to NRElectric are provided to another entity in Australia – the customer.*

13. *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 as the requirements of section 9-5 of the GST Act are satisfied.*

Example 2: Repairs to leased goods under an offshore warranty

14. *An Australian mining company, Digger & Co, leases a pumping machine from Lease Ltd, an Australian entity that specialises in leasing mining equipment. Lease Ltd acquired the pump from Pumps International, the non-resident manufacturer. The lease is for three years. The pump was new when Digger & Co took out the lease and it is covered by a manufacturer's warranty for the period of the lease.*

15. *After nine months of operation, the pump develops a fault and only works at half its capacity. Lease Ltd advises Digger & Co that Oz Repairer performs the warranty repairs on these pumps as per an agreement with Pumps International. Digger & Co contacts Oz Repairer and the parties agree that Oz Repairer will repair the pump on site. As all the repairs came under the warranty, Oz Repairer sends the account for its services to Pumps International. There is no charge to Digger & Co or to Lease Ltd by Oz Repairer for its services.*

16. *There is a supply of repair services by Oz Repairer to Pumps International under an agreement between them. The agreement is that Oz Repairs will perform repairs that fall within the terms of the warranty given by Pumps International in respect of the pumps it makes. The supply is made to Pumps International, but the services are carried out in Australia on the Australian customer's goods. The supply is the repair of the pump by Oz Repairer so that the pump can continued to be used. The Australian customer, Digger & Co, is the entity using the pump. The actual flow of the repair services is to this entity. The repair services supplied to Pumps International are provided to another entity in Australia – the customer, Digger & Co.*

17. *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.*

18. *Digger & Co unexpectedly encounters water in one of its shafts and leases an additional pump manufactured by Pumps International from Lease Ltd for a short period of three months. This pump is still under warranty.*

19. *This pump also breaks down during the period of its lease. Following the terms of the lease Digger & Co returns the pump to Lease Ltd. Lease Ltd subsequently has Oz Repairer repair the defective pump.*

20. *As with the repairs to the pump that Digger & Co had under a long term lease, there is a supply of repair services by Oz Repairer to Pumps International – the repairs to the pump that became faulty under the short term lease. This supply is made to Pumps International, but the services are carried out in Australia on the Australian customer's pump. The supply made by Oz Repairer is the repair of Lease Ltd's pump. The actual flow of the repair services is to this entity. The repair services supplied to Pumps International are provided to another entity in Australia – the customer, Lease Ltd.*

21. *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 as the requirements of section 9-5 of the GST Act are satisfied.*

Example 3: Treatment of repairs made under a warranty from the non-resident manufacturer to the customer

22. *Oz Distributor is the Australian distributor of a non-resident manufacturer's (NRM) cars. Oz Distributor is registered for GST. NRM is not registered for GST and is not an associate of Oz Distributor or grouped with Oz Distributor for GST purposes. Oz Distributor distributes the cars in Australia in its own right, not as agent for NRM. NRM provides a warranty with all the cars it makes that are sold by Oz Distributor. Under an agreement with NRM, Oz Distributor does such repairs as are necessary to fulfil NRM's obligations under the warranty NRM gave to Oz Distributor's customer.[6] The distributor either performs the repairs itself or has a member of its dealer network perform the repairs under a separate arrangement. Neither Oz Distributor nor NRM charge the customer for repair services covered by NRM's warranty. However, Oz Distributor does charge NRM for its supplies as provided for in its agreement with NRM.*

23. *There is a supply of repair services by Oz Distributor to NRM under the agreement between them. The agreement is that Oz Distributor will perform repairs on the cars that fall within the terms of the warranty given by NRM. The supply is made to NRM, but the services are carried out in Australia on the Australian customer's car. The supply is the repair of the car brought in by the Australian customer. The actual flow of the repair services is to the Australian customer.*

24. *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 as subsection 38-190(3) applies. The supply is a taxable supply as the requirements of section 9-5 are met.*

Date of Effect

25. This Determination explains our view of the law as it applied from 1 July 2000. You can rely upon this Determination on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. 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.

[6] This is contrasted with the circumstances in which the distributor effects such repairs that are necessary pursuant to a warranty given to the customer by the distributor itself. This arrangement is considered in GSTD 2006/1.

26. If this Determination conflicts with a previous private ruling that you have obtained, this 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 this 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 this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation
19 April 2006

Previous draft:

GSTD 2005/D3

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2001/8; GSTR 2004/7; GSTR 2005/6; GSTD 2006/1

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)A 1999 9-5
- ANTS(GST)A 1999 38-190(1)
- ANTS(GST)A 1999 38-190(3)
- TAA 1953 37

ATO references

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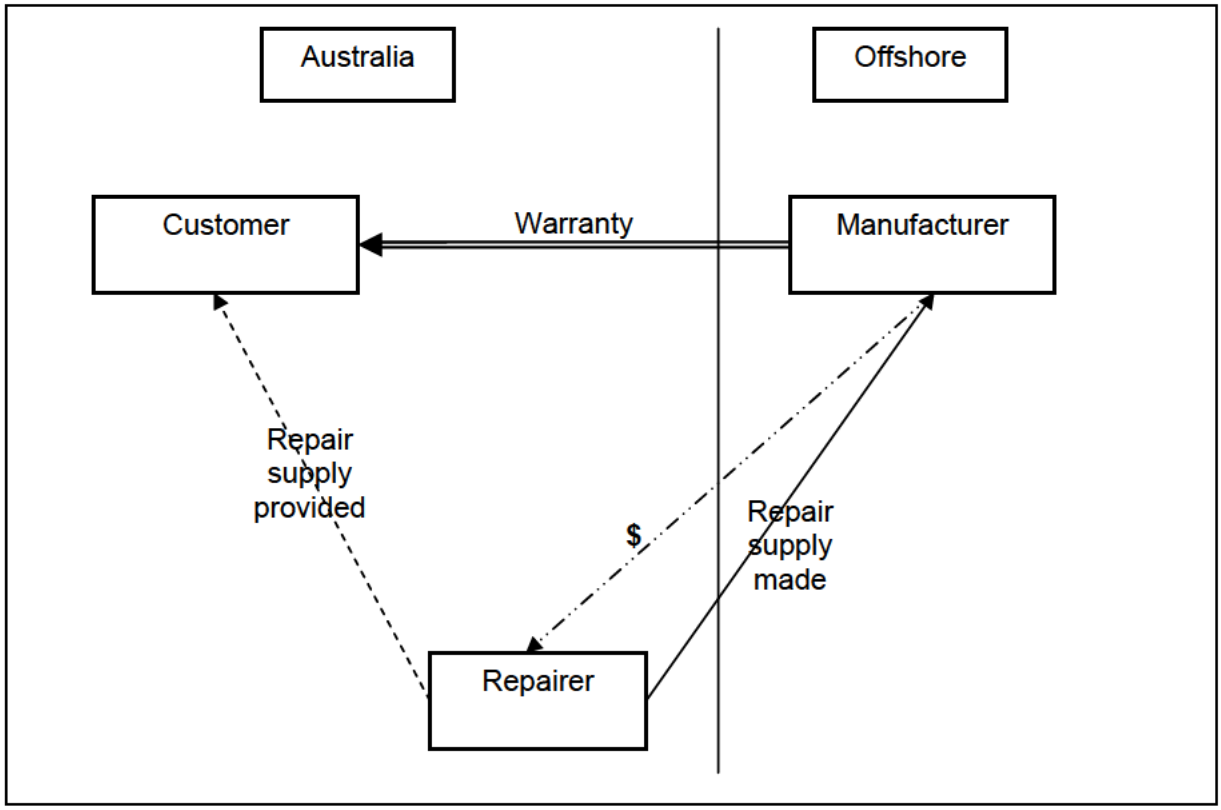
Attachment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