

GSTD 2012/10 - Goods and services tax: when are telecommunication supplies made under arrangements for global roaming in Australia by an Australian resident telecommunication supplier GST-free under subsection 38-570(1) and subsection 38-570(3) of the A New Tax System (Goods and Services Tax) Act 1999?

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! From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.



Goods and Services Tax Determination

Goods and services tax: when are telecommunication supplies made under arrangements for global roaming in Australia by an Australian resident telecommunication supplier GST-free under subsection 38-570(1) and subsection 38-570(3) of the *A New Tax System (Goods and Services Tax) Act 1999*?

❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Background

1. This question was considered amongst others in issue 3 of the Telecommunications Industry Liaison Group – Issues Register (issues register). Issue 3 deals with the GST treatment of specific telecommunication supplies.¹
2. The issues register was a public ruling for the purposes of former section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* before 1 July 2010. The Commissioner's view in this Determination is consistent with those expressed in the issues register.
3. In this Determination, **telecommunication supplier** means a carrier or a carriage service provider as defined in the *Telecommunications Act 1997* or an Internet service provider as defined in Schedule 5 to the *Broadcasting Services Act 1992*.²

¹ Other issues dealt with in the issues register are addressed in Goods and Services Tax Determinations GSTD 2012/7; GSTD 2012/8 and GSTD 2012/9.

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4. In this Determination, an **interconnection service** is a service that links telecommunication suppliers' networks to enable the transfer of calls or internet traffic between each other's networks. This allows users of one supplier to communicate with users of another supplier, or to access services provided by another supplier.

5. The telecommunication supplies covered by this Determination include global mobile call roaming and global internet roaming, referred to as global roaming.

Ruling

6. Telecommunication supplies made under arrangements for global roaming in Australia by an Australian resident telecommunication supplier are GST-free when subsection 38-570(1) and subsection 38-570(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)³ are satisfied.

7. In order to be GST-free, these telecommunication supplies must be made to a non-resident telecommunication supplier and provided to enable the user of a portable device that has a subscription to a telecommunication network outside Australia (the subscriber), to roam in Australia.

8. A telecommunication supply⁴ is defined as a supply relating to the transmission, emission or reception of signals, writing, images, sounds or information of any kind by wire, radio, optical or other electromagnetic systems.

9. Telecommunication supplies include the supply of:

- telephone calls;
- transmission element of international data exchange;
- call back services;
- the provision of leased lines, circuits and global networks;
- e-mail and Internet access;
- satellite transmissions;
- the related transfer or assignment of the right to use capacity for the transmission, emission or reception; and
- the provision of access to global information networks.

10. However, telecommunication supplies do not include the following supplies delivered through telecommunication media:

- licences to use intellectual property such as computer software; and
- consultancy services provided via the Internet.

11. The definition of a telecommunication supply captures the means of communication, but not the content, where the supply of that content involves a different type of supply. For example, a separate charge for a pay-per-view sporting event is not consideration for a telecommunication supply.

² Subsection 38-570(3) only applies to supplies made by such suppliers. See also paragraph 2.22 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 3) Bill 2010.

³ All legislative references are to the GST Act unless otherwise indicated.

⁴ The term is defined in section 85-10 of the GST Act and it is referred to in section 38-570 of the GST Act.

12. Subsection 38-570(1) refers to a telecommunication supply made under arrangements for global roaming in Australia.

13. For the purposes of paragraph 38-570(1)(a), a telecommunication supply must enable the use of a portable device⁵ in Australia while the device is linked to:

- an International Mobile Subscriber Identity number in the case of phone roaming; or
- an Internet Protocol (IP) address in the case of Internet roaming; or
- another internationally recognised identifier;

containing a home network identity that indicates a subscription to a telecommunication network outside Australia.

14. Portable devices used by subscribers for global roaming in Australia include:

- mobile phones and smart phones;
- tablet computers, personal digital assistants, laptop computers; and
- Universal Serial Bus (USB) modems.

They do not include devices that do not use telecommunication networks, for example, walkie talkies and radio communication devices.

15. Under paragraph 38-570(1)(b) the supply must also satisfy the requirements of subsection 38-570(2) or subsection 38-570(3). Subsection 38-570(2) (supply made by non-resident telecommunication supplier), although referred to, is not discussed in this Determination.

16. Subsection 38-570(3) applies to the supply made by an Australian resident telecommunication supplier under a global roaming arrangement.

17. The supply must be made by an Australian resident carrier, or carriage service provider or internet service provider and provided to the user in Australia of the portable device described in subsection 38-570(1).⁶

18. The supply must be made to a non-resident that carries on, outside Australia, an enterprise of making telecommunication supplies. The non-resident must not carry on an enterprise of making telecommunication supplies in Australia.⁷

19. For the purposes of subsection 38-570(3), the word *provided* is to be contrasted with the term *made*. The Commissioner considers that 'provided' in the context of subsection 38-570(3) is used, in relation to a supply covered by section 38-570, to distinguish between the contractual flow of the supply made to a non-resident (a non-resident that carries on an enterprise of making telecommunication supplies outside and not in Australia) and the actual flow of the service or other things provided to the user in Australia of the portable device.

20. Further guidance in relation to the Commissioner's view of the distinction between a supply made and a supply provided is contained in Goods and Services Tax Ruling GSTR 2005/6.⁸

⁵ The term 'portable device' is not expressly defined in the GST Act and therefore takes on its ordinary meaning in its context.

⁶ Paragraphs 38-570(3)(a) and paragraph 38-570(3)(b) of the GST Act.

⁷ Paragraph 38-570(3)(c) of the GST Act.

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Example 1 – Global roaming – overseas visitor in Australia – makes and receives calls – use of Australian telecommunication supplier's network

21. US Co, an American resident company, has a mobile phone international roaming agreement with US Telco, an American telecommunication supplier.

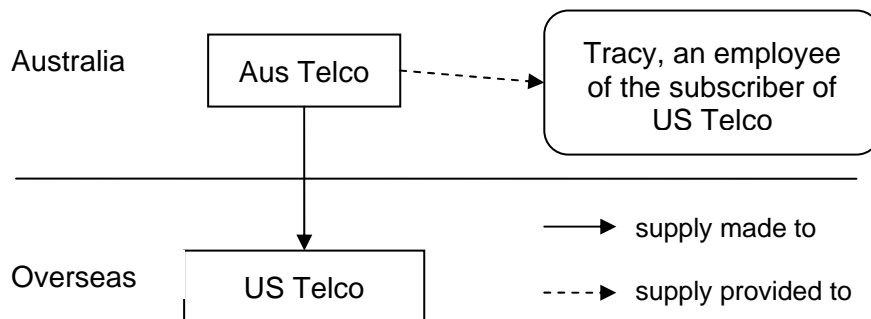
22. Tracy, an employee of US Co, travels to Australia on business. While in Australia, Tracy uses her employer's mobile phone to make calls to business contacts in Australia and outside Australia and receive calls from business contacts in Australia and outside Australia. The calls involve using Aus Telco's (an Australian resident telecommunication supplier) network.

23. Aus Telco has an interconnection agreement with US Telco and charges US Telco an interconnection fee.

24. Tracy uses a portable device in Australia for sending and receiving signals, writing, images, sound and information. The device is linked to an international mobile subscriber number containing a home network identity that indicates a subscription to a telecommunication network outside Australia. The supply meets the requirements of subsection 38-570(1).

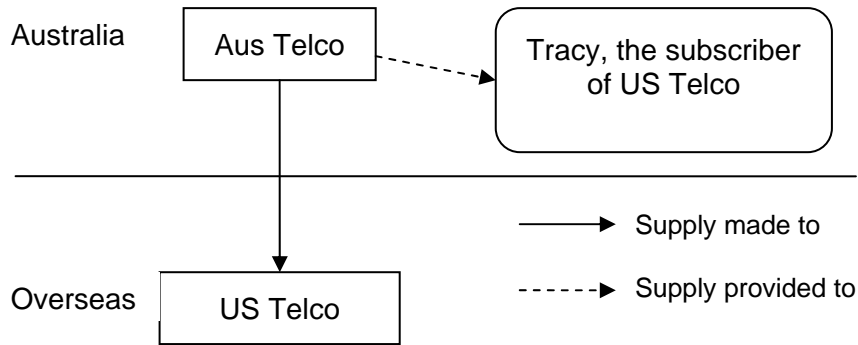
25. Aus Telco is an Australian resident carriage service provider and makes the supply of the interconnection service to US Telco, a non-resident telecommunication supplier. The supply is provided to Tracy, to enable the use of her employer's mobile phone in Australia. The supply meets the requirements of subsection 38-570(3).

26. The supply by Aus Telco to US Telco satisfies subsection 38-570(1) and subsection 38-570(3) and is therefore GST-free.



⁸ Goods and Services Tax Ruling 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*. The meaning of 'provided' is explained at paragraphs 220-225.

27. Where Tracy has an international roaming agreement with US Telco for her personal mobile phone and while she is in Australia, she uses that phone rather than her employer's phone, the supply by Aus Telco to US Telco satisfies subsection 38-570(1) and subsection 38-570(3) and is GST-free.



Example 2 – Global roaming – ancillary call centre services provided in Australia by an Australian telecommunication supplier to an overseas telecommunication supplier

28. Aus Telco and US Telco enter into a global roaming agreement under which their respective customers can roam on the other's mobile network. Under the terms of the agreement each telecommunication supplier also provides an ancillary call centre service (call centre) to help roamers who encounter difficulties in operating the service.

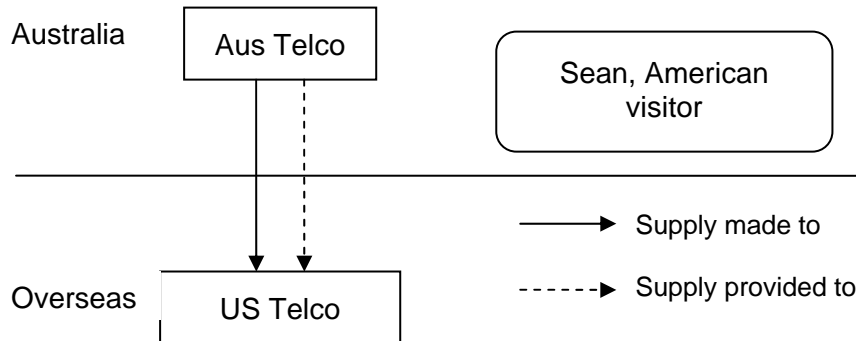
29. Sean, an American visitor to Australia, calls Aus Telco's call centre for assistance with his mobile phone. Aus Telco helps Sean and charges US Telco for the advice under the global roaming agreement.

30. The supply of global roaming satisfies subsection 38-570(1) and subsection 38-570(3) and is therefore GST-free.

31. The call centre services are an ancillary part of the supply of global roaming. The services are provided to facilitate the operation of global roaming by each of the telecommunication suppliers.

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32. *Call centre services that are ancillary to global roaming services are GST-free under section 38-570.⁹*



Example 3 – Global internet roaming – overseas visitor in Australia – customer of overseas telecommunication supplier – uses Australian telecommunication supplier to access internet

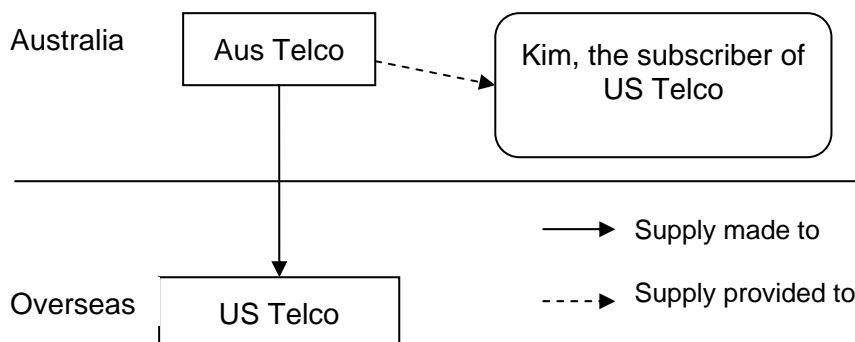
33. *Kim, an American resident, has a global internet roaming (GIR) agreement with US Telco. While Kim is in Australia he uses his laptop to connect to GIR to access the internet.*

34. *Aus Telco has an agreement with US Telco to provide US Telco's customers with access to its network. Aus Telco bills US Telco for the use of its network.*

35. *Kim uses a portable device in Australia for sending and receiving signals, writing, images, sound and information. The portable device is linked to an IP address containing a home network identity that indicates a subscription to a telecommunication network outside Australia. The supply meets the requirements of subsection 38-570(1).*

36. *Aus Telco is an Australian resident Internet service provider and makes the supply of telecommunication services to US Telco, a non-resident telecommunication supplier. The supply is provided to the subscriber of a non-resident telecommunication supplier, Kim, to enable him to access the internet on his laptop in Australia. The supply meets the requirements of subsection 38-570(3).*

37. *The supply by Aus Telco to US Telco satisfies subsection 38-570(1) and subsection 38-570(3) and is therefore GST-free.*



⁹ The term 'ancillary' is explained in paragraph 55 to 63 of GSTR 2001/8 *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*. The GST treatment of a composite supply that contains a dominant part and includes something that is ancillary is discussed in paragraph 17 to 18A of that ruling.

Date of effect

38. This Determination applies both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

28 November 2012

References

Previous draft:

GSTD 2012/D4

Related Rulings/Determinations:

TR 2006/10; GSTR 2001/8; GSTR 2005/6;
GSTD 2012/7; GSTD 2012/8; GSTD 2012/9

Subject references:

- goods and services tax
- GST free
- non resident entities
- non resident individuals
- telecommunication supply

Legislative references:

- ANTS(GST)A 1999 38-570
- ANTS(GST)A 1999 38-570(1)
- ANTS(GST)A 1999 38-570(1)(a)
- ANTS(GST)A 1999 38-570(1)(b)

- ANTS(GST)A 1999 38-570(2)
- ANTS(GST)A 1999 38-570(3)
- ANTS(GST)A 1999 38-570(3)(a)
- ANTS(GST)A 1999 38-570(3)(b)
- ANTS(GST)A 1999 38-570(3)(c)
- ANTS(GST)A 1999 85-10
- TAA 1953
- TAA 1953 Sch 1 105-60
- Broadcasting Services Act 1992 Sch 5
- Telecommunications Act 1997

Other references:

- Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 3) Bill 2010
- The Telecommunications Industry Liaison Group – Issues Register

ATO references

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