

GSTR 2000/31A3 - Addendum - Goods and services tax: supplies connected with Australia

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Addendum

Goods and Services Tax Ruling

Goods and services tax: supplies connected with Australia

This Addendum amends Goods and Services Tax Ruling GSTR 2000/31 to reflect amendments to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), which were made by the *Tax Laws Amendment (2005 Measures No. 1) Act 2005*. In particular, it reflects the amendment that inserted paragraph 9-25(5)(c) into the GST Act. Paragraph 9-25(5)(c) ensures that certain supplies of rights or options offshore are connected with Australia. The amendment applies to supplies made on or after 1 October 2005.

The Addendum also amends GSTR 2000/31 to:

- include references to new subsection 38-190(2A) of the GST Act where references are made to other provisions of section 38-190. Subsection 38-190(2A) of the GST Act was inserted by *Tax Laws Amendment (2004 Measures No. 6) Act 2005* and applies to supplies made on or after 1 April 2005. Subsection 38-190(2A) of the GST Act removes an anomaly that allowed supplies of certain services made to owners of residential property (for example, non-resident owners) that is situated in Australia to be GST-free if the owner is not in Australia when the thing supplied is done;
- take account of the Full Federal Court decision in *Saga Holidays Ltd v. Commissioner of Taxation* [2006] FCAFC 191;
- update the date of effect clause and references to provisions and rulings; and
- update the references sections of GSTR 2000/31.

GSTR 2000/31

GSTR 2000/31 is amended as follows:

1. Paragraphs 8, 8A, 8B and 8C

Omit the paragraphs; substitute:

8. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely upon this Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on this interpretation of the law in GST public and private rulings.

8A. Changes made to this Ruling by Addenda that issued on 1 December 2004, 15 August 2007 and 17 October 2007 have been incorporated into this version of the Ruling.^{5A} You can rely on the changes made to the Ruling by each Addendum for the purposes of section 105-60 of Schedule 1 to the TAA from the date of issue of the relevant Addendum. If the Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, the Addendum prevails.

8B. If you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of the relevant Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the previous ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of the relevant Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the previous ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

2. Footnote 7A

Omit the text; substitute:

Refer to Goods and Services Tax Rulings GSTR 2002/6 Goods and services tax: exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999*; GSTR 2005/2 Goods and services tax: supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia; and GSTR 2003/4 Goods and services tax: stores and spare parts for international flights and voyages.

^{5A} Refer to each Addendum to see how it is that the Addendum amends this Ruling.

3. Paragraph 24

After paragraph 24, insert:

24A. Subsection 38-190(2A) provides that a supply covered by any of items 2 to 4 in the table in subsection 38-190(1) is not GST-free if the acquisition of the supply relates (whether directly or indirectly, or wholly or partly) to the making of a supply of real property situated in Australia that would be input taxed under Subdivision 40-B or 40-C. For example, a non-resident individual, who owns residential rental property situated in Australia and who is not registered or required to be registered, acquires gardening services for the property and also acquires the services of a local real estate agent to advertise the property for rent. The acquisition of each service relates to the making of an input taxed supply of real property. The supplies of those services are therefore not GST-free.

4. Paragraph 35

Omit the paragraph; substitute:

35. If the supply of a thing other than goods or real property is either not connected with Australia, or is connected with Australia because of paragraph 9-25(5)(c), the supply is a taxable supply under section 84-5 and subject to GST if:

- the recipient of the supply acquires the thing supplied solely or partly for the purpose of an enterprise that the recipient carries on in Australia, but not solely for a creditable purpose (paragraph 84-5(1)(c)); and
- the supply is for consideration (paragraph 84-5(1)(d)); and
- the recipient is registered, or required to be registered (paragraph 84-5(1)(e)).

However the supply is not a taxable supply to the extent that it is GST-free or input taxed.¹⁸

¹⁸ Subsection 84-5(1).

5. Paragraph 40

Omit the paragraph; substitute:

40. Invest Bank, an Australian financial institution, engages Legal UK, solicitors operating in the UK, to prepare an opinion on the legal aspects of a proposed joint venture banking operation in Australia with a subsidiary of a UK bank. The legal advice is prepared in the UK and provided to Invest Bank in Australia. Under subsection 9-25(5) the supply of that advice is not connected with Australia because the advice is not prepared in Australia, Legal UK has no permanent establishment in Australia and the supply is not of a right or option to acquire another thing, the supply of which would be connected with Australia. As the supply is not connected with Australia paragraph 84-5(1)(a) is satisfied. (Refer to paragraphs 175 to 225E of this Ruling which explain the operation of subsection 9-25(5).)

6. Paragraph 41

(a) Omit:

84-5(1)(b)

substitute:

84-5(1)(d)

(b) Omit

84-5(1)(c)

substitute:

84-5(1)(e)

(c) Omit

84-5(1)(a)

substitute:

84-5(1)(c)

7. Paragraph 42

At the end of the paragraph, insert:

^{21A} If a supply is taxable under both sections 9-5 and 84-5, GST is only payable under section 84-5. It is not payable under section 9-40: subsection 84-10(3).

8. Paragraph 43

Omit the paragraph; substitute:

43. Non-resident entities that make supplies that are connected with Australia are required to register if the registration turnover threshold is met.²² A non-resident enterprise is required to be registered if its GST turnover is at or above \$75,000. The turnover threshold for a non-profit body is \$150,000. Supplies that are not connected with Australia or are connected with Australia because of paragraph 9-25(5)(c)^{22A} are disregarded in working out the GST turnover. Further supplies of rights or options to use commercial accommodation^{22B} in Australia that are made on or after 1 October 2005 are also disregarded in working out GST turnover if the supplies are not made in Australia and are made through an enterprise that the supplier does not carry on in Australia.^{22C}

43A. Division 83 (non-residents making supplies connected with Australia) allows a non-resident supplier and the recipient of a supply by the non-resident supplier to agree that the GST liability is to be borne by the recipient where certain requirements²³ are met (that is, the GST on the taxable supply is 'reverse charged' to the recipient).

43B. A non-resident supplier that is making taxable supplies (on the basis that it is required to be registered for GST) need not apply to register for GST if the only reason that the supplier is required to be registered is because the registration turnover threshold is met when taxable supplies covered by section 83-5 are taken into account.^{23A}

43C. However, Division 83 does not apply to all supplies. Under subsection 83-5(2) the following supplies cannot be reverse charged:

- a taxable supply under Division 84;
- a taxable supply made by a non-resident through a resident agent;
- a supply that is disregarded under paragraph 188-15(3)(b) or 188-20(3)(b). That is, the supply is connected with Australia because of paragraph 9-25(5)(c); and

²² Sections 23-5 and 23-15.

^{22A} Paragraph 188-15(3)(a) and (b) (current GST turnover); paragraphs 188-20(3)(a) and (b) (projected GST turnover) respectively.

^{22B} Commercial accommodation has the meaning given by section 87-15 and refers to 'commercial residential premises' as defined in section 195-1.

^{22C} Paragraph 188-15(3)(c) (current GST turnover); paragraph 188-20(3)(c) (projected GST turnover).

²³ These requirements are set out in section 83-5.

^{23A} Sections 83-25 and 83-30.

- a supply that is disregarded under paragraph 188-15(3)(c) or 188-20(3)(c). That is, the supply is of a right or option to use commercial accommodation in Australia that is made on or after 1 October 2005, is not made in Australia and is made through an enterprise that the supplier does not carry on in Australia.

9. Paragraph 60

At the end of the last bullet point, insert:

^{25A} In *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191 (*Saga Holidays*) it was held that the supply of the accommodation component of an Australian tour package by a United Kingdom tour operator (Saga) to non-residents was a contractual right exercisable over or in relation to land and thus was a taxable supply of real property connected with Australia.

10. Paragraph 61

Omit the paragraph; substitute:

61. A supply of anything other than goods or real property is connected with Australia if:

- the thing is done in Australia (paragraph 9-25(5)(a));
- the supplier makes the supply through an enterprise that the supplier carries on in Australia (paragraph 9-25(5)(b)); or
- all of the following apply:
 - (i) neither paragraph 9-25(5)(a) nor (b) applies in respect of the thing;
 - (ii) the thing is a right or option to acquire another thing; and
 - (iii) the supply of the other thing would be connected with Australia (paragraph 9-25(5)(c)).

11. Paragraph 89

After the paragraph, insert:

Supply is of a right or option to acquire another thing and the supply of the other thing would be connected with Australia

89A. If a supply is of a right or option to acquire some other thing and the supply of the right or option is not done in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(a)) and the supplier does not make the supply of the right or option through an enterprise that the supplier carries on in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(b)), the supply of the right or option is connected with Australia under paragraph 9-25(5)(c) if the supply of the other thing would be connected with Australia.

89B. As the note to paragraph 9-25(5)(c) indicates, the provision may apply if an overseas tour operator, that does not carry on an enterprise in Australia, makes a supply overseas of an Australian holiday package to a non-resident tourist and the holiday package gives the non-resident tourist rights or options to acquire goods, services or other things the supply of which would be connected with Australia under section 9-25. Where paragraph 9-25(5)(c) applies the supply of the rights or options is connected with Australia.^{30A}

12. Paragraph 94

After the paragraph, insert:

94A. It is the Commissioner's view that the supply of a right or option to acquire another thing may be partly connected with Australia under paragraph 9-25(5)(c). This is consistent with the accompanying Explanatory Memorandum^{30B} which explains (at paragraph 3.1) that paragraph 9-25(5)(c) is to 'ensure that the GST Act applies to the offshore supply of options or rights to goods, services and other things, where the goods, services and other things are connected with Australia'. Thus to the extent that the goods, services or other things are not connected with Australia it follows that the supply of the right or option should not be connected with Australia.

^{30A} The supply of rights exercisable over or in relation to land is a supply of real property and thus connected with Australia if the land is in Australia. In such cases the right is connected with Australia under subsection 9-25(4) and not paragraph 9-25(5)(c). See *Saga Holidays* [2006] FCAFC 191 which is mentioned at footnote 25A.

^{30B} Explanatory Memorandum accompanying Tax Laws Amendment (2005 Measures No. 1) Bill 2005 enacted as *Tax Laws Amendment (2005 Measures No. 1) Act 2005*.

94B. Therefore, a supply of the right or option to acquire another thing is partly connected with Australia if the supply of the other thing would be partly connected with Australia.

13. Paragraph 100

At the end of paragraph, insert:

^{30C} This is consistent with the view of the Full Federal Court in *Saga Holidays* [2006] FCAFC 191. In determining the meaning of 'incidental' for the purposes of subsection 96-5(4), Stone J (at paragraph 49) referred to ordinary dictionary meanings with the most apposite being 'of secondary importance' and 'happening or likely to happen in fortuitous or subordinate conjunction with something else'. Stone J also noted (at paragraph 52) that Division 96 is not concerned with the purpose of the contract but with the supply made under the contract. *Saga Holidays* is also mentioned at footnote 25A.

14. Paragraph 167

After the paragraph, insert:

Example 22A – Contractual right exercisable over or in relation to land

167A. A non-resident tour operator acquires Australian holiday packages from Australian tour operators and supplies those tour packages to non-resident individuals. The supply of the tour package by the non-resident tour operator includes a supply of rights to accommodation in Australia. The supply of rights to accommodation in Australia is a supply of a contractual right exercisable over or in relation to land in Australia and is therefore a supply of real property that is connected with Australia.^{57A}

15. Paragraph 169

Omit the paragraph; substitute:

169. Under subsection 9-25 a supply of anything other than goods or real property is connected with Australia if:

- the thing is done in Australia (paragraph 9-25(5)(a));
- the supplier makes the supply through an enterprise that the supplier carries on in Australia (paragraph 9-25(5)(b)); or

^{57A} *Saga Holidays* [2006] FCAFC 191. See also Goods and Services Tax Determination GSTD 2004/3 Goods and services tax: is a supply of rights to accommodation a supply of real property for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*?

- all of the following apply:
 - (i) neither paragraph 9-25(5)(a) nor (b) applies in respect of the thing;
 - (ii) the thing is a right or option to acquire another thing; and
 - (iii) the supply of the other thing would be connected with Australia (paragraph 9-25(5)(c)).

16. Paragraph 171

Immediately after 'paragraph 9-25(5)(b)', insert ' or paragraph 9-25(5)(c)'.

17. Paragraph 174

After the paragraph, insert:

174A. Paragraph 9-25(5)(c) is examined in more detail at paragraphs 225A to 225E of this Ruling. If a supply is of a right or option to acquire some other thing and the supply of the right or option is not done in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(a)) and the supplier does not make the supply of the right or option through an enterprise that the supplier carries on in Australia (that is, it is not connected with Australia under paragraph 9-25(5)(b)), the supply of the right or option is connected with Australia under paragraph 9-25(5)(c) if the supply of the other thing would be connected with Australia.

174B. As the note to paragraph 9-25(5)(c) indicates, the provision may apply where an overseas tour operator, that does not carry on an enterprise in Australia, makes a supply overseas of an Australian holiday package to a non-resident tourist and the holiday package gives the non-resident tourist rights or options to acquire goods, services or other things the supply of which would be connected with Australia under section 9-25. Where paragraph 9-25(5)(c) applies the supply of the rights or options is connected with Australia.^{59A}

^{59A} See footnote 30A.

18. Paragraph 225

After the paragraph, insert:

Paragraph 9-25(5)(c)

Supply of a right or option to acquire another thing and the supply of the other thing would be connected with Australia

225A. Where neither paragraph 9-25(5)(a) nor 9-25(5)(b) applies to the supply of a right or option to acquire another thing, the supply of the right or option is connected with Australia if the supply of the other thing would be connected with Australia.

Example 39A – Supply of rights or options to things connected with Australia

225B. Cuisineworld is a non-resident entity in the United Kingdom (UK) that specialises in supplying cooking classes at renowned restaurants around the world, along with accommodation and bus tours. Cuisineworld has no business operations outside of the UK. Cuisineworld acquires the Australian holiday cooking package on a GST inclusive basis from Oz Travel, a resident tour wholesaler in Sydney.^{64A} The Australian holiday cooking packages are on-sold by Cuisineworld to tourists as rights or options to acquire cooking classes and accommodation at selected five star hotels and to take bus tours in Australia.

225C. The supply by Cuisineworld of rights or options to acquire accommodation in Australia, is a contractual right that is exercisable over or in relation to land in Australia. It is therefore a supply of real property that is connected with Australia under subsection 9-25(4).

225D. The supply by Cuisineworld of rights or options to acquire cooking classes (training services) and bus tours (services) is the supply of things other than goods or real property. It is therefore necessary to consider subsection 9-25(5). Neither paragraph 9-25(5)(a) nor (b) is applicable as the supply of the rights is done in the UK and Cuisineworld does not carry on an enterprise in Australia. As the rights or options are to acquire cooking classes and bus tours in Australia and those services would be connected with Australia under either paragraphs 9-25(5)(a) or (b), the supply of the rights or options to acquire those services is connected with Australia under paragraph 9-25(5)(c).

^{64A} The supply by Oz Travel to Cuisineworld is not GST-free. The supply of the right or option to acquire accommodation in Australia is a supply of real property and thus section 38-190 does not apply. Subsection 38-190(2) applies to negate the GST-free status of the supply under subsection 38-190(1) of the right or option to acquire cooking classes and bus tours in Australia, as the supply of those things would be connected with Australia and would not be GST-free.

225E. The supplies of the Australian holiday cooking packages by Cuisineworld are therefore connected with Australia. However, this does not necessarily mean that Cuisineworld must register for GST in Australia. Cuisineworld, in working out if it meets the registration turnover threshold (section 23-15) disregards supplies that are connected with Australia because of paragraph 9-25(5)(c) or that are of a right or option to use commercial accommodation in Australia that are not made in Australia and are made through an enterprise that the supplier does not carry on in Australia.^{64B} Assuming that Cuisineworld makes no other supplies that are connected with Australia it may choose not to register for GST. If Cuisineworld chooses not to register for GST it is not entitled to claim any input tax credits for the acquisition of the Australian holiday cooking packages from Oz Travel and it is not liable for GST on the supply of the Australian holiday cooking packages to tourists. Thus even though Cuisineworld makes supplies of holiday packages that are connected with Australia it can choose to stay outside the Australian GST system.

19. Detailed contents list

Insert:

<i>Supply is of a right or option to acquire another thing and the supply of the other thing would be connected with Australia</i>	89A
<i>Example 22A – Contractual right exercisable over or in relation to land</i>	167A
<i>Paragraph 9-25(5)(c)</i>	225A
<i>Supply of a right or option to acquire another thing and the supply of the other thing would be connected with Australia</i>	225A
<i>Example 39A – Supply of rights or options to things connected with Australia</i>	225B

20. References

(a) Omit:
GSTR 2003/2

substitute:

GSTR 2005/2
GSTR 1999/1

^{64B} This is the effect of paragraphs 188-15(3)(b) and (c) (current GST turnover) and 188-20(3)(b) and (c) (projected GST turnover).

GSTR 2000/31

(b) Omit:

- ANTS(GST)A99 84-5(1)(b)

Substitute:

- ANTS(GST)A99 9-25(5)(c)
- ANTS(GST)A99 9-40
- ANTS(GST)A99 23-15
- ANTS(GST)A99 38-190(2A)
- ANTS(GST)A99 Subdiv 40-B
- ANTS(GST)A99 Subdiv 40-C
- ANTS(GST)A99 Div 83
- ANTS(GST)A99 83-5(2)
- ANTS(GST)A99 83-25
- ANTS(GST)A99 83-30
- ANTS(GST)A99 84-5(1)(d)
- ANTS(GST)A99 84-5(1)(e)
- ANTS(GST)A99 84-10(3)
- ANTS(GST)A99 188-15(3)(a)
- ANTS(GST)A99 188-15(3)(b)
- ANTS(GST)A99 188-15(3)(c)
- ANTS(GST)A99 188-20(3)(a)
- ANTS(GST)A99 188-20(3)(b)
- ANTS(GST)A99 188-20(3)(c)
- TAA 1953 Sch 1 105-60
- Tax Laws Amendment (2005 Measures No. 1) Act 2005

(c) Insert:

- *Saga Holidays Limited v. Commissioner of Taxation* [2006] FCAFC 191

(d) Insert:

Other references:

- Explanatory Memorandum to the Tax Laws Amendment (2005) Measures No. 1) Bill 2005

This Addendum explains our view of the law as it applies both before and after its date of issue. You can rely upon this Addendum on and from its date of issue for the purpose of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

If this Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, this Addendum prevails. However, if you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of the Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of this Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation17 October 2007

ATO references

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Goods and Services Tax -- International services --
supplies used or enjoyed outside Australia