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

This document has changed over time. This is a consolidated version of the ruling which was published on *18 December 2002*

Goods and Services Tax Ruling

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*

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.*

What this Ruling is about

1. This Ruling is about the operation of section 38-185 of *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') which sets out when supplies of goods are GST-free exports.

2. The Ruling explains the requirements for a supply of goods to be a GST-free export under items 1 to 4 listed in the table in subsection 38-185(1) of the GST Act.

3. In particular, this Ruling sets out the Commissioner's views on:

(a) the meaning of 'the supplier exports';

(b) when the export of goods occurs;

(c) when an exporter satisfies the condition that the export of goods must occur within specified time limits; and

(d) the types of documents that a supplier needs to keep as evidence of satisfying the requirements for an export of goods to be GST-free.

4. The Ruling also addresses the operation of subsection 38-185(3) of the GST Act and how it expands the scope of items 1 and 2 of the table in subsection 38-185(1) in certain circumstances.

5. Section 38-185 applies only to a supply of goods.[1] This Ruling only covers supplies of goods made by way of sale. It does not cover supplies of goods made in other ways such as by way of lease or hire. Section 38-187 applies to supplies of goods by way of lease or hire where the goods are used outside Australia.

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[1] Section 195-1 of the GST Act defines 'goods' as meaning any form of tangible personal property.

6. This Ruling does not address the supply of transport services by transport providers during the process of exporting goods. Section 38-355 sets out when these supplies are GST-free as an international transport of goods.

7. This Ruling also does not address supplies of things, such as services or rights, for consumption outside Australia, which are covered by section 38-190 of the GST Act.

8. All legislative references in this Ruling are to the GST Act, and all references to an item number are to an item in the table in subsection 38-185(1), unless otherwise stated.

9. In this Ruling we often refer to commonly used trade terms in foreign trade such as EXW, FCA, FAS, FOB, CIF, CPT, CIP, DDP and DDU. For the purposes of this Ruling each of these terms has the meaning stated in the Incoterms 2000 published by the International Chamber of Commerce ('the ICC'). These are set out at Appendix C to this Ruling.

Date of effect

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

11. If this 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 this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Legislative context

12. Section 9-5 provides that a taxable supply is made if:

(a) you make a supply for consideration;

(b) the supply is made in the course or furtherance of an enterprise that you carry on;

(c) the supply is connected with Australia; and

(d) you are registered, or required to be registered.

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

13. Supplies of goods are connected with Australia[2] where the goods are delivered, or made available, in Australia to the recipient[3] or the supply involves the goods being removed from Australia. If the other requirements of section 9-5 are met these supplies are taxable supplies, unless the supply is GST-free.

14. A supply of goods, where those goods are exported from Australia, is GST-free if the requirements of one of the items in the table in subsection 38-185(1) are met.

15. Items 1 to 4, the subject of this Ruling, are set out in full below.

GST-free exports		
Item	**Topic**	**These supplies are GST-free**
1	Export of goods	A supply of goods, but only if the supplier exports them from Australia before, or within 60 days (or such further period as the Commissioner allows) after: (a) the day on which the supplier receives any of the consideration for the supply; or (b) if, on an earlier day, the supplier gives an invoice for the supply – the day on which the supplier gives the invoice.

[2] Subsections 9-25(1) and (2).
[3] Recipient, in relation to a supply, means the entity to which the supply was made, refer to section 195-1.

GST-free exports of goods (continued)		
Item	**Topic**	**These supplies are GST-free**
2	Export of goods – supplies paid for by instalments	A supply of goods for which the consideration is provided in instalments under a contract that requires the goods to be exported, but only if the supplier exports them from Australia before, or within 60 days (or such further period as the Commissioner allows) after: (a) the day on which the supplier receives any of the final instalment of the consideration for the supply; or (b) if, on an earlier day, the supplier gives an invoice for that final instalment – the day on which the supplier gives the invoice
3	Export of aircraft or ships	A supply of an aircraft or ship, but only if the recipient of the aircraft or ship exports it from Australia under its own power within 60 days (or such further period as the Commissioner allows) after taking physical possession of it.
4	Export of aircraft or ships – paid for by instalments	A supply of an aircraft or ship for which the consideration is provided in instalments under a contract that requires the aircraft or ship to be exported, but only if the recipient exports it from Australia before, or within 60 days (or such further period as the Commissioner allows) after, the earliest day on which one or more of the following occurs: (a) the supplier receives any of the final instalment of the consideration for the supply; (b) the supplier gives an invoice for that final instalment; (c) the supplier delivers the aircraft or ship to the recipient or (at the recipient's request) to another person.

Ruling

16. Section 38-185 covers the GST treatment of supplies of goods for export. The table in subsection 38-185(1) lists the supplies of goods that are GST-free.

17. Items 1 and 2 require the supplier to export the goods that are supplied. Under items 3 and 4, which deal with the export of aircraft or ships, the recipient must export the aircraft or ship.

18. The word 'export' is not defined in the GST Act and therefore it takes its ordinary meaning of sending goods to other countries or places for sale or exchange, or taking goods out of one country with the intention of landing them in another. If there is no export of goods from Australia, items 1 to 4 do not apply.

19. For the purposes of the GST Act, 'Australia'[4] includes all land territory (except external territories), the coastal sea and the installations described in section 5C of the *Customs Act 1901* ('the Customs Act').

Items 1 and 2 – Export of goods

20. Under items 1 and 2, a supply of goods is GST-free where the supplier exports them from Australia and the export occurs within a specified time period. Item 1 applies to exports of goods generally. Item 2 applies where the consideration for the supply is provided in two or more instalments under a contract where it is an express or implied term that the goods are to be exported.

21. Both items require, not only that there is an export of goods, but that the supplier is the entity that exports them.

22. The requirement that the supplier is the entity that exports the goods is satisfied where either:

(a) the supplier contracts at the supplier's own expense with an international carrier for the transportation of the goods to a destination outside Australia; or

(b) the supplier is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport those goods to a destination outside Australia; or

(c) the requirements of subsection 38-185(3) are met (see paragraphs 67 to 81).

23. A supplier, therefore, exports goods where the goods are sent from Australia to another country pursuant to a contract of sale with

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[4] 'Australia' is defined in section 195-1. See further paragraphs 98 to 105 of the Explanations section of this Ruling.

terms such as DDP[5], CIF[6], or CPT[7]. This is because under these terms, the supplier is responsible for contracting with a carrier to transport the goods to a named overseas destination.

24. A supplier also exports goods where the goods are sent from Australia to another country pursuant to a contract of sale with, for example, FOB[8] terms. This is because under these terms, the supplier is responsible for delivering the goods on board a ship that has been engaged to carry them to an overseas destination.

25. Similarly, a supplier exports goods where the goods are sent from Australia pursuant to a contract of sale on FAS[9] or FCA[10] terms, provided:

- the named place of delivery is an international port or airport; and
- the carrier to whom the goods are delivered, is the operator of a ship or aircraft.

26. This is because under these terms, and with the given provisos, the supplier is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged to carry them to an overseas destination.

27. However, a supplier does not export goods where the supplier's responsibility only extends to delivering the goods in Australia to a person who is not the operator of a ship or aircraft engaged to carry them out of Australia. A supplier does not export under a contract of sale with FCA terms where the carrier to whom the goods are delivered, is not the operator of a ship or aircraft, for example, a freight consolidator.

28. A supplier is considered responsible for delivery of the goods to the ship or aircraft operator even if the supplier arranges for another party, such as a freight forwarder or consolidator to deliver the goods to the carrier, on the supplier's behalf. However, where another party acting on behalf of the recipient delivers the goods to the ship or aircraft operator, the supplier is not the exporter.

29. A supplier who is not the exporter may still be treated as the exporter where the recipient exports and the requirements of

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[5] Delivered duty paid (…named place of destination) - per Incoterms 2000, see further, Appendix C.
[6] Cost insurance freight (…named port of destination) – per Incoterms 2000, see further Appendix C.
[7] Carriage paid to (…named place of destination) – per Incoterms 2000, see further Appendix C.
[8] Free on board ship (…named port of shipment) – per Incoterms 2000, see further Appendix C.
[9] Free Alongside ship (…named port of shipment) – per Incoterms 2000 – see further Appendix C.
[10] Free Carrier (…named place) – as per Incoterms 2000 – see further Appendix C.

subsection 38-185(3) are met. If so, the supply can still be GST-free (see paragraphs 67 to 81).

30. Sometimes goods which are being exported are sold and resold in a series of transactions. Each supply in the 'chain' is examined individually. Where a supply of goods in that chain is connected with Australia, the criteria outlined in paragraph 22 for identifying if a supplier exports for the purposes of item 1 or 2 are applied to that supplier.

31. Once there is a supply in the chain where the supply is not connected with Australia, that supply and any subsequent supplies are outside the scope of the Australian GST net. This is discussed further in the Explanations section of the Ruling at paragraphs 164 to 187. Examples illustrating these points are also provided.

32. For a supply of goods to be GST-free under item 1 or 2, the supplier must export the goods before, or within a 60 day period (or such further period as the Commissioner allows).

33. Given that goods can only leave Australia on board a ship or aircraft,[11] the time at which goods are exported from Australia is the time at which the ship or aircraft departs its final Australian port or airport and clears the territorial limits of Australia.

34. Accordingly, the timing requirement is met if the ship or aircraft departs its final Australian port or airport and leaves Australia before, or within 60 days (or such further period as the Commissioner allows) after, the time period commences.[12]

35. The period commences on the day after the earlier of:

(a) the day on which the supplier receives any of the consideration for the supply (or any of the final instalment of the consideration for the supply where the supply is paid for by instalments); or

(b) the day the supplier gives an invoice for the supply (or gives an invoice for the final instalment of the consideration for the supply where the supply is paid for by instalments).

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[11] There may be other methods of exporting goods in future, for example, pipelines, cables or spacecraft, but this Ruling does not address these potential modes of export.

[12] If a time period ends on a Saturday, Sunday, a Public or Bank Holiday, the timing requirement is met if the export occurs on the first day following, which is not a Saturday, Sunday, Public or Bank holiday. This is the effect of section 36 of the *Acts Interpretation Act 1901*.

36. However, if a supplier who, or that, contracts for carriage of the goods from Australia hands over possession of the goods to an international transport provider[13] before or within the 60 day period, the Commissioner accepts that the timing aspect of the requirement is met.

37. If a supplier who, or that, is responsible for delivering the goods to the operator of a ship or aircraft, delivers those goods before or within the 60 day period, the Commissioner also accepts that the timing requirement is met provided that the supplier completes all other actions necessary to export the goods, for example, obtaining necessary permits and Customs approvals.

38. In the circumstances described in paragraphs 36 and 37, if the ship or aircraft departs its final Australian port or airport and leaves Australia after the end of the 60 day period, the Commissioner automatically grants an extension of time equal to the additional time required for the export to occur.

39. In other cases where the supplier is unable to satisfy the 60 day timing requirement, the supplier may apply to the Commissioner for an extension of time.

40. If the goods are a ship or an aircraft that the supplier exports under its own power those goods are exported when the ship or aircraft departs its final Australian port or airport and leaves Australia for a destination outside Australia.

41. To demonstrate that a supply of goods is a GST-free export, the supplier must have sufficient documentary evidence to show that all of the requirements of the items are met. The supplier should obtain such documentary evidence during the process of exporting the goods, or within a reasonable period of time after the goods have been exported.

42. Provided there is no information to the contrary, we consider that a supplier has sufficient documentary evidence when the supplier has sufficient documentation for a person independent of the transaction to reasonably conclude that:

(a) there was a supply of goods;

(b) the supplier was the entity that exported the goods; and

(c) the goods were exported from Australia and within the specified time limits.

43. The types of documents available to a supplier will vary depending on the circumstances of the supply. Table 1 of Appendix B lists the types of transport documentation that a supplier may have,

[13] International transport provider is the entity that the supplier has engaged to carry or arrange the carriage of the goods to the overseas destination. This includes a freight forwarder, consolidator, air express courier, postal agency, etc, as well as a shipping line or airline.

depending on the mode of transport used to export the goods. Table 2 of Appendix B lists the types of commercial and other documentation that a supplier may have to explain the transaction. The lists of documents described in these Appendices are not exhaustive, but offer guidance to the types of documents available. Suppliers, of course, may have other evidence which demonstrates that the requirements of the relevant item are met.

44. As noted in paragraph 42, one of the requirements which must be evidenced, is that the goods were exported from Australia. One example of a situation where the Commissioner considers it reasonable for an independent party to conclude that goods were exported is where the supplier holds:

(a) a clear Export Clearance Number ('ECN') in respect of an export entry for the goods; and

(b) a valid transport document issued by a shipping line or airline showing:

– that the goods were received by the ship or aircraft operator; and

– that the ship or airline has been contracted to carry the goods to a destination outside Australia.

45. However, this is only reasonable when there is no other information to indicate that the goods were not exported, such as, advice from the Australian Customs Service that the export entry has not been acquitted against the outwards cargo manifest of a departing ship or aircraft.

46. If a supplier, having supplied goods GST-free, subsequently becomes aware that the goods were not exported to a place outside Australia, this gives rise to an adjustment event. An adjustment event includes an event which has the effect of causing a supply to become a taxable supply.[14] See further paragraph 216 and Example 14 at paragraph 217 of the Explanations section of this Ruling.

47. Suppliers may become aware through their own actions or as a result of information supplied to them by others that the goods were not exported.

48. An adjustment event also arises if goods are not exported before the end of the 60 day period (or such further period allowed by the Commissioner).

49. If an adjustment event occurs in the same tax period as the GST on the supply is attributable, an adjustment does not arise. However, if the GST on the supply would have been attributable to an

[14] Subsection 19-10(1) and paragraphs 62 and 63 of GSTR 2000/19 – Goods and Services Tax: making adjustments under Division 19 for adjustment events.

earlier tax period, the supplier has an increasing adjustment equal to the amount of GST now payable on that supply.

50. Adjustments for adjustment events are attributed to the tax period in which the supplier becomes aware of the adjustment.[15]

51. Further explanation of items 1 and 2 is provided at paragraphs 88 to 220 of the Explanation section of the Ruling. Also, documentary evidence is discussed further at paragraphs 295 to 312.

Items 3 and 4 - Export of aircraft or ships

52. Items 3 and 4 apply to the supply of aircraft or ships.

53. Under item 3, a supply of an aircraft or ship is GST-free, but only if the recipient of the aircraft or ship exports it from Australia under its own power within a 60 day period (or such further period as the Commissioner allows).

54. Item 4 applies where the consideration for the supply of the aircraft or ship is provided in two or more instalments under a contract where it is an express or implied term that the goods are to be exported. The recipient must export the aircraft or ship from Australia before, or within 60 days (or such further period as the Commissioner allows) after, the earliest day on which one or more specified events occur.

55. The recipient is the entity that exports it where the recipient, or a party engaged by the recipient, physically navigates the aircraft or ship outside of Australia.

56. Where the supplier exports the ship or aircraft the supply is not GST-free under item 3 or 4. It may be GST-free under item 1.

57. Under item 3 the 60 day period commences the day after the recipient (or another person at the recipient’s request) takes physical possession of the aircraft or ship. For supplies paid for by instalments, the 60 day period commences the day after the earliest day on which the supplier receives any consideration for the final instalment, the supplier gives an invoice for that final instalment or the supplier delivers the ship or aircraft to the recipient (or person nominated by the recipient).

58. A ship or aircraft is exported when it departs its final port or airport and leaves Australia for a destination outside Australia.

59. Accordingly, the timing requirement is satisfied if the ship or aircraft departs its final Australian port or airport and leaves Australia before the end of the 60 day period.

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[15] Subsection 29-20(1).

60. To demonstrate that the supply of an aircraft or ship is a GST-free export, the supplier must have sufficient evidence to show that all of the requirements of item 3 or 4 are met.

61. Provided there is no information to the contrary, a supplier will have sufficient documentary evidence when they have documents sufficient to enable a person independent of the transaction to conclude reasonably that:

(a) there was a supply of a ship or aircraft;

(b) the recipient was the entity that exported the ship or aircraft; and

(c) the export occurred and within the specified time limit.

62. In most cases, the supplier will obtain this evidence from the recipient after departure, or immediately before departure.

63. With a combination of the documents listed in Tables 1 and 2 of Appendix B, a supplier should be able to demonstrate that the elements of item 3 or 4 are satisfied. Suppliers, of course, may have other evidence which demonstrates the requirements are met.

64. One example of evidence sufficient to demonstrate to an independent party that the ship or aircraft was exported is:

(a) a clear ECN in respect of an export entry for the ship or aircraft; and

(b) a copy of the final certificate of clearance issued by Customs which shows a destination outside Australia,

provided there is no other information to indicate that the goods were not exported.

65. If a supplier, having supplied an aircraft or ship GST-free, subsequently becomes aware that the aircraft or ship was not exported or not exported within the specified time, this gives rise to an adjustment event (refer back to paragraphs 46 to 50).

66. Further explanation of items 3 and 4 and of documentary evidence is provided in the Explanations section of the Ruling at paragraphs 221 to 235 and 295 to 301 plus 313 to 317 respectively.

Subsection 38-185(3) – supplier treated as exporter for the purposes of items 1 and 2

67. Under subsection 38-185(3) a supplier who has not exported goods (as explained at paragraphs 22 to 28), is treated as having exported them for the purposes of items 1 or 2 if the following conditions are met:

(a) before the goods are exported, the supplier supplies them to an entity that is not registered or required to be registered, (paragraph 38-185(3)(a));

(b) that entity exports the goods from Australia, (paragraph 38-185(3)(b));

(c) the goods have been entered for export within the meaning of section 113 of the Customs Act; (paragraph 38-185(3)(c));

(d) 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, (paragraph 38-185(3)(d)); and

(e) the supplier has sufficient documentary evidence to show that the goods were exported (paragraph 38-185(3)(e)).

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

68. Satisfaction of the requirements in subsection 38-185(3) means that the supplier is treated for the purposes of items 1 or 2 as the exporting entity. The GST-free status of the supply then depends on the other requirements of item 1 or 2 being met. For instance, the export must occur within the specified time period.

69. Where the recipient who, or that, contracts for the carriage of the goods delivers the goods to the international transport provider, the Commissioner accepts that the timing requirement is met in the same manner as outlined in paragraphs 36 and 38 above. This is also the case where the recipient delivers the goods to the operator of a ship or aircraft, provided that the recipient has completed all other actions necessary to export the goods.

70. In these circumstances, the Commissioner automatically grants an extension of time equal to the additional time required for the export to occur if the ship or aircraft departs its final Australian port or airport and leaves Australia after the end of the 60 day period.

71. For the purposes of paragraph 38-185(3)(a), a supplier has supplied the goods when the goods are delivered in accordance with the contract of sale. Where the contract of sale requires physical delivery to a third party who is acting for the buyer (for example, a freight forwarder, consolidator etc) such delivery constitutes a supply to the buyer/recipient, not to the third party.

72. For the purposes of paragraph 38-185(3)(b), ‘that entity exports the goods’ means that the recipient must export the goods. This requirement is met where:

(a) the recipient contracts at the recipient's own expense with an international carrier for the transportation of the goods to a destination outside Australia; or

(b) the recipient is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport those goods to a destination outside Australia.

73. The condition in paragraph 38-185(3)(c) is met where an export entry document has been communicated to Customs.

74. For the purposes of paragraph 38-185(3)(d), activities such as packaging, wrapping, cleaning, disinfecting, dismantling or testing are considered 'necessary to prepare' the goods for export, where it is not reasonable, given the nature of the goods, to export those goods without carrying out that activity.

75. As the recipient is the entity that actually exports the goods, paragraph 38-185(3)(e) specifically requires the supplier to obtain and hold sufficient documentary evidence to show that the goods were exported. Without this evidence, it is not possible to treat the supplier as having exported the goods under subsection 38-185(3). The holding of sufficient documentary evidence is a condition that must be satisfied before a supplier can be treated, under that subsection, as having exported the goods.

76. Under items 1 and 2, the export must occur within a 60 day period (or such further period as the Commissioner allows). We consider, therefore, that if the supplier obtains sufficient documentary evidence of export within the 60 day period (or such further period as the Commissioner allows for export) or if obtained after the end of this period, before the due date for lodgment of the next BAS[16], the requirement to have documentary evidence that the goods were exported is satisfied.

77. If the supplier is unable to obtain sufficient documentary evidence within this time frame, the requirement that the supplier has sufficient documentary evidence is not met. The supply, therefore, is a taxable supply.[17] Unless the supplier can take immediate action which the supplier knows will result in the supplier obtaining, without delay, the required documentary evidence, the supplier's BAS must reflect that the supply is taxable.

78. Documentary evidence is sufficient when it provides a reasonable basis for an independent party to conclude that the goods were exported. This is discussed further at paragraphs 279 to 290 in the Explanation section of the Ruling.

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[16] Business Activity Statement.

[17] This is provided, of course, the other requirements of section 9-5 are met e.g., the supply is in the course of an enterprise, the supplier is registered, etc.

79. If any of the other requirements of subsection 38-185(3) are not met, for example, the goods are not entered for export within the meaning of section 113 of the Customs Act, the supply is not GST-free and the supplier is liable to pay GST in respect of the supply.

80. As part of demonstrating that the supply of goods is a GST free export, a supplier also needs sufficient documentary evidence to show that all the requirements of paragraphs 38-185(3)(a) to (d) are met. The supplier should obtain such documentary evidence either before the goods are exported or within a reasonable period of time after the goods have been exported.

81. Further explanation of subsection 38-185(3) is provided at paragraphs 237 to 294 of the Explanation section of this Ruling. Also, documentary evidence is discussed further at paragraphs 295 to 317 of the Explanations section of the Ruling.

Subsection 38-185(2)

82. A supply of goods covered by any of items 1 to 6 in the table in subsection 38-185(1) is not GST-free if the supplier reimports the goods into Australia. That is, if the supplier imports goods into Australia after having exported them, the original supply of those goods is not GST-free.

83. If the supplier is treated as having exported the goods under subsection 38-185(3), subsection 38-185(2) does not apply. However, subsection 38-185(3) provides that if the same goods are reimported into Australia after having been exported by the recipient, the supply is not GST-free unless the reimportation is a taxable importation.

Documentary evidence

84. Suppliers making GST-free supplies, are required to keep records that explain the transaction and all actions they engage in that are relevant to that supply.[18] For GST-free exports this includes evidence that the goods were exported and within the specified time limits.

85. If a supplier is unable to obtain documentary evidence that would enable a party independent of the transaction to conclude reasonably that the elements of the relevant item are met, the supply is not treated as GST-free.

86. Documentary evidence is discussed in more detail at paragraphs 295 to 317 of the Explanation section of the Ruling.

[18] Section 70 of the TAA 1953.

Explanations

87. For a supply of goods to be GST-free under section 38-185, the supply must satisfy the requirements of one of the seven items listed in the table in subsection 38-185(1). This Ruling deals with items 1 to 4 in the table. Each of these items are considered in detail below.

Items 1 and 2 – Export of goods

88. Item 1 deals with the export of goods generally, where the supplier exports the goods. If the consideration for the supply of those goods is provided in instalments under a contract that requires the goods to be exported, item 2 applies.

89. A supply of goods that are exported is GST-free where the elements of item 1 or 2 of the table in subsection 38-185(1) are satisfied. The elements are:

(a) there is a supply of goods;

(b) the supplier exports them from Australia; and

(c) the export occurs before or within a 60 day period (or such further period as the Commissioner allows).

Supply of goods

90. Section 38-185 applies to a supply of goods. A supply of goods is a supply of any form of tangible personal property.[19] Supplies of things other than goods or real property for consumption outside Australia may be GST-free under section 38-190.

91. Section 38-185 does not apply to the movement of goods within the same entity. For example, where an Australian branch of a non-resident company moves goods from the Australian branch to the non-resident head office, there is no supply of goods. A company cannot make supplies to itself. Goods can be exported without there being a supply of those goods. However, section 38-185 only operates where there is a supply of goods.

Supplier exports goods from Australia

92. The supplier must be the entity that exports the goods from Australia for either item 1 or 2 to apply. If the recipient exports the goods items 1 and 2 cannot be satisfied unless subsection 38-185(3) applies (see paragraphs 237 to 294).

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[19] Refer the definition of goods in section 195-1.

Meaning of export

93. The term 'export' is not defined in the GST Act. Its ordinary meaning is 'to send (commodities) to other countries or places for sale, exchange etc.'[20]

94. Similarly, exportation refers to '…the sending of commodities out of a country, typically in trade.'[21]

95. The Federal Court of Australia commented on the meaning of export in *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517. At page 523, Beaumont, Gummow and Einfeld JJ stated:

> The ordinary meaning of 'export' is to send commodities from one country to another using the verb 'send' as indicating that which occasioned or brought about the carriage of the commodity from one country to another.[22]

96. The Federal Court has considered the term export in the context of the Customs Act, where, like the GST Act, the term is not defined. In *Wesley-Smith v. Balzary* (1976-77) 14 ALR 681 Forster J said:

> Export in the first sense no doubt means taking of goods out of a proclaimed port or across a low water mark with the intention of landing them at some place beyond Australia.[23]

97. It is considered that these ordinary meanings apply in defining the word 'export' in the GST Act. For the purposes of section 38-185, to export goods is to physically send or take goods out of Australia with the intention that the goods be landed at a place outside Australia.

Meaning of Australia

98. Because the meaning of export is to send or take goods outside of Australia, to determine whether goods are in fact exported, it is necessary to establish the physical boundaries of 'Australia.' If the goods are not actually exported from Australia, neither the supplier nor the recipient can be an exporter.

99. 'Australia' is defined in the GST Act as follows:

> 'Australia does not include any external Territory. However, it includes an installation (within the meaning of the Customs

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[20] Macquarie Dictionary 3rd edition.
[21] Macquarie Dictionary 3rd edition.
[22] *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1922) 36 FCR 517 at page 523.
[23] (1976-77) 14 ALR 681 at 688.

Act) that is deemed by section 5C of the Customs Act to be part of Australia'.[24]

100. The *Acts Interpretation Act 1901* provides that:

'any reference in an Act…to Australia…shall be read as including a reference to the coastal sea of Australia'.[25]

101. Coastal sea[26] is defined as:

'in relation to Australia, means:

(i) the territorial sea of Australia; and

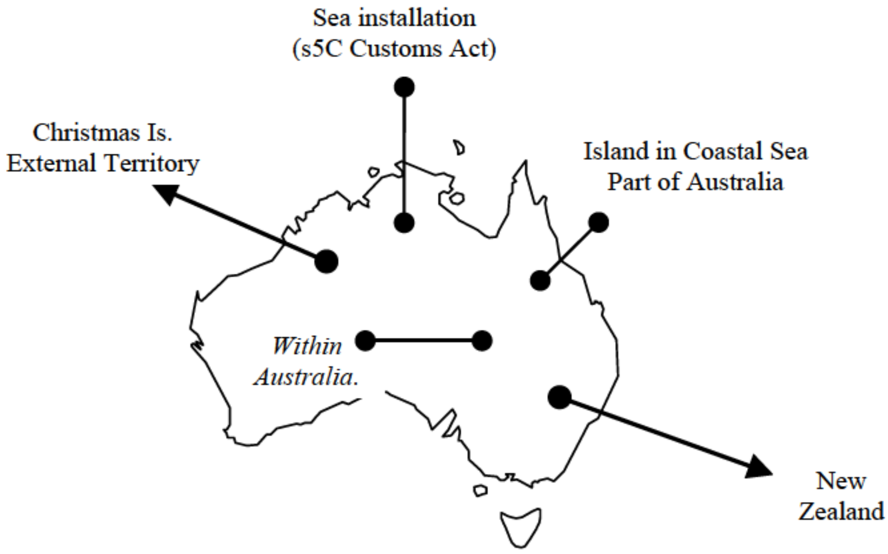
(ii) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Internal Territory,

and includes the airspace over, and the sea-bed and subsoil beneath, any such sea'.

102. By proclamation made under the *Seas & Submerged Lands Act 1973*,[27] the outer limit of the territorial sea extends to 12 nautical miles from the territorial sea baseline.

103. This means that 'Australia' includes all land territory (except external territories), the coastal sea and the installations described in section 5C of the Customs Act.[28] Typically, the installations referred to in section 5C are oil drilling rigs and similar mining exploration installations.

104. The application of the meaning of Australia in the context of exports can be demonstrated by the diagram below.



[24] Section 195-1.
[25] Paragraph 15B(1)(b) of the *Acts Interpretation Act 1901*.
[26] Subsection 15B(4) of the *Acts Interpretation Act 1901*.
[27] Proclamation made in November 1990 under section 7 of the *Seas & Submerged Lands Act 1973*.

105. The above diagram distinguishes between goods that are exported from Australia, represented by arrows, and goods that are not exported from Australia, represented by lines. If goods are exported from Australia, it is then necessary to determine whether the supplier is the entity that exports the goods.

Supplier exports

106. The question of whether the supplier exports, that is, whether the supplier sends or takes goods from Australia, is answered by examining the role the supplier plays in bringing about the removal of the goods from Australia.

107. The supplier is the exporter for the purposes of item 1 or 2, if the part played by the supplier in bringing about the removal of the goods from Australia is sufficient to justify the supplier being described as the sender of those goods out of Australia.

108. The policy intent for requiring the supplier to export is to ensure that the goods are not used or consumed in Australia. If the supplier exports the goods, the supplier then knows that the goods are not used or consumed in Australia, and the goods can be supplied GST-free.

109. Against this policy background, we consider that the role of the supplier is sufficient to justify describing the supplier as the entity that exports goods from Australia, where:

(a) the supplier contracts at the supplier's own expense with an international carrier for the transportation of the goods to a destination outside Australia; or

(b) the supplier is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport those goods to a destination outside Australia.

110. This approach recognises that the supplier has put the goods into a position which means that the goods are for export and not for use or consumption in Australia. Also, in each case, it is the acts of the supplier alone which determine whether the supplier satisfies the primary element of a GST-free export (i.e., 'the supplier exports'). The supplier has access to documents which evidence the particular acts which the supplier carried out in sending the goods overseas.

111. The location of the recipient of the supply of goods is not relevant. The recipient may be located in Australia but the supplier exports the goods if the supplier carries out the acts described in paragraph 109 above.

[28] Section 5C is quoted in full at Appendix A.

112. A third way in which the supplier exports goods from Australia is prescribed by the GST Act itself. If the requirements of subsection 38-185(3) are met, the supplier is treated as having exported the goods.

113. In all three cases, the goods must be actually physically transported out of Australia. If goods are not in fact exported from Australia, items 1 and 2 (and items 3 and 4) do not apply, regardless of the actions or intentions of the supplier.

114. A supplier contracts for carriage of the goods from Australia at the supplier's own expense, and therefore exports goods, where the goods are supplied under a contract of sale with terms such as DDP, CIF, CFR, CPT or CIP as per Incoterms 2000 (see Appendix C) and the named port or place of destination is an overseas location. This is because under these terms the seller is required to contract at the seller's own expense for the carriage of the goods to the named overseas destination.

115. At a practical level, if goods are exported where the supplier's name appears on the international transport document as 'shipper', and the supplier pays the transport operator, the supplier exports. This is the case even if the supplier recoups the transport costs from the buyer.

116. A supplier also, in effect, contracts for the carriage of goods to a destination outside Australia and, therefore, exports where the supplier physically carries the goods out of Australia as accompanied baggage on board a ship or aircraft.[29] Further, a supplier satisfies the export requirement where the supplier itself operates the ship or aircraft which carries the goods out of Australia.

117. Where the goods supplied are a ship or aircraft which is exported under its own power, the supplier exports where the supplier contracts with a person to physically navigate the ship or fly the aircraft to a destination outside of Australia.

118. Where a supplier does not enter an international contract of carriage in respect of the goods supplied, it is necessary to look at where, or to whom, the supplier delivers the goods. If the supplier delivers the goods to the operator of a ship or aircraft, we accept that the 'supplier exports'.

119. In the case of 'break bulk' commodities and other goods that are carried out of Australia on board a ship without being packed in a

[29] In this case, the ship or aircraft operator has agreed to carry the goods as part of the contract to carry the passenger. The supplier would require documentary evidence of the export. For guidance, see documentary requirements for recipients who export goods as part of their personal luggage at paragraph 283 of this Ruling.

freight container,[30] the supplier exports where the supplier delivers the goods on board, or alongside the ship.

120. In the case of a contract of sale with FOB or FAS terms, the buyer must contract at the buyer's own expense for the carriage of the sale goods by ship from Australia to the overseas destination. Even though the contract of carriage may be between the buyer and carrier, the supplier exports the goods for the purposes of items 1 and 2. This is because the supplier is responsible for delivering the goods to the carrier by loading them on board the nominated ship (FOB terms) or alongside the ship (FAS terms) in circumstances where the ship has been engaged to physically transport those goods to a destination outside Australia.

121. In the case of containerised cargo carried out of Australia by ship, we accept that the supplier exports the goods where the supplier is responsible for delivering the container into the custody of the operator of the ship at the port of shipment. This is usually achieved by physically transferring control of the goods to the stevedore who is accepting and loading goods for the shipping operator.

122. In the case of goods carried out of Australia by aircraft, the supplier exports where the supplier delivers the goods into the custody of the airline at an airport.

123. It follows that where goods are sold under a contract with FCA terms, where the named carrier is a shipping line or airline, the supplier is the exporter. This is the case, even though the buyer contracts at the buyer's expense for carriage of the goods to a destination outside Australia.

124. However, to demonstrate that the supply of goods is a GST-free export, the supplier still requires evidence that the carrier has been contracted to carry the goods out of Australia. Ordinarily the supplier receives a copy of the international transport document or some other evidence of the contract of carriage (for example, an air waybill, consignment note, sea waybill, Bill of Lading, mate's receipt).

125. Where a supplier is only responsible for delivery of the goods at a place inside Australia and to a person in Australia who, or that, is not a ship or airline operator, the supplier is not considered to be the exporter. This is the case under an Ex-works (EXW) or Free Carrier (FCA) contract of sale where the supplier is only required to deliver the goods either at the supplier's own premises, or to a carrier, other than a ship or aircraft operator, named by the buyer. The named

[30] 'Freight container' has the same meaning as defined in section 195-1 of the GST Act. That is: 'freight container means a container within the meaning of the Customs Convention on Containers, 1972, signed in Geneva on 2 December 1972, as affected by any amendment of the Convention that has come into force.'
A reference to containerised goods in this Ruling refers to goods packed into a freight container.

carrier may be an agent of the buyer, a freight forwarder, consolidator, or any other third party who, or that, is not a ship or airline operator contracted to carry the goods to an overseas destination. If the supplier is not the exporter, the supply is not GST-free under item 1 or 2 unless the requirements of subsection 38-185(3) are met (see paragraphs 237 to 294).

126. The documentary evidence must show that the goods were delivered by the supplier on board a ship or into the control of a ship or aircraft operator, and that the ship or aircraft operator has been contracted to carry the goods to a destination outside Australia. The supplier is then able to demonstrate that the requirement, the 'supplier exports,' is satisfied.

Export through agent of supplier

127. In some cases, a supplier may engage another party such as a freight forwarder, consolidator, express courier or other intermediary to deliver the goods to the ship or aircraft operator. Although that other party delivers the goods on behalf of the supplier, it is considered that the supplier is responsible for the delivery. The supplier is still considered to be the exporter where the supplier's agent makes the necessary delivery of the goods to the international transporter engaged by another.

128. Similarly, a supplier may engage another party to enter the international contract of carriage on its behalf. In this case, the supplier is still considered to be the exporter, despite the contract being arranged through their agent.

129. To be identified as the exporter in circumstances where the export arrangements are carried out through an agent, the supplier needs to obtain documentary evidence from the agent. The evidence must show that the goods have been delivered to the international transporter engaged by another, or that the international contract has been entered into. The supplier must also have documentary evidence of the relationship with the agent. This could include a letter of instructions to the agent or other commercial documents, authorising the agent to arrange delivery or carriage on behalf of the supplier.

130. Where a supplier does not either contract for the carriage of the goods from Australia (at the supplier's own expense) or deliver the goods to the international transporter engaged by another, the supplier does not export the goods for the purposes of items 1 or 2. Usually, this would mean the recipient exports the goods. If the recipient exports the goods, the supply to the recipient may still be GST-free where the requirements of subsection 38-185(3) are met (refer to paragraphs 237 to 294).

131. The following examples illustrate which party to a sales contract is the exporter. References to Incoterms are intended to be

consistent with the meaning of those terms as per the ICC Incoterms 2000. However, it should be noted that the particular Incoterm does not in itself determine the exporter. It is the actions that the supplier performs (which should be in accordance with the supplier's contractual obligations) which determines the issue. If the supplier does not actually either contract for the carriage of the goods from Australia (at the supplier's own expense) or deliver the goods to the international transporter engaged by another, the supplier does not export the goods, regardless of what Incoterm is adopted.

Example 1 – supplier exports – FOB terms of sale.

132. *Oz Wool Corporation, an Australian company, contracts to sell a bulk shipment of wool to China Knits Co. The sale price and terms of the contract are agreed on the basis that the Australian supplier makes delivery FOB Melbourne (Free on Board ship). Title to the wool and risk passes upon the seller delivering over the ship's rail. Oz Wool is advised of the shipment arrangements, and proceeds to bundle the wool and deliver it to the wharf. Oz Wool receives a Mate's Receipt as evidence of delivery and is charged for the stevedoring expenses of loading the wool on board the vessel. The shipping line issues a bill of lading which states the destination as Hong Kong. The ship later departs Australia and the wool is eventually unloaded at an overseas port. As Oz Wool is responsible for delivering the goods on board the ship which has been engaged to carry the goods overseas, Oz Wool is the exporter.*

Example 2 – supplier exports – FCA terms of sale

133. *Aussie Sweets Pty Ltd, an Australian food exporter, receives an urgent order from a luxury Fijian resort for 500 frozen cheesecakes. The terms of the sale require the Australian supplier to deliver the goods FCA (free carrier) to Pacific Air Cargo, an airline which operates throughout Australia and the Pacific. Aussie Sweets delivers the cheesecakes to the airline operator's premises at the airport where they are packed in a refrigerated container and loaded on board a flight to Fiji. Upon receipt of the goods, Pacific Air Cargo issues an air waybill as evidence of the contract to carry the goods out of Australia. The Australian supplier is the exporter of the goods.*

Example 3 – recipient exports – Ex-works terms of sale

134. *Black Stump Coal Ltd is a mining company operating in central Queensland. The company makes a sale of 10,000 tonnes of coal under an Ex-works contract to a foreign recipient. Delivery of the coal is made at the supplier's premises in Queensland, and risk passes to the recipient at this point. The recipient arranges for the*

coal to be carried by train from the mine to the coast where it is loaded on board a ship bound for Singapore. As Black Stump Coal is no longer responsible for the goods once the coal leaves the mine, the company is not responsible for the delivery to the operator of the ship. The Australian supplier is not the exporter for the purposes of item 1. (The supplier may be treated as having exported the goods if all of the elements of subsection 38-185(3) are met).

Example 4 – supplier delivers goods to a freight forwarder – CIF terms of sale

135. *Bewdy Bats (Aust) is a manufacturer of quality cricket bats. An English cricket club contacts the Australian company to purchase a quantity of the bats. Bewdy Bats, having never made export sales, delivers the goods to a freight forwarder who has been engaged by Bewdy to arrange the export. The bats are sold on a CIF (cost, insurance, freight) basis and the forwarder delivers them on board a ship destined for the UK. Bewdy Bats pays for the freight, is later issued with a house bill of lading and is the exporter of the goods.*

Example 5 – supplier delivers goods to air express courier

136. *Bewdy Bats (Aust) starts to receive individual orders from English cricketers for Australian-made bats. The Australian company sends the bats overseas either through the post or by an express courier service. Bewdy bats contracts directly with the carriers. The air express courier issues Bewdy Bats with a consignment note in respect of the goods. Australia Post provides documentation evidencing receipt of the goods for delivery to the overseas address. Although the Australian supplier has engaged third parties to deliver the goods on board a ship or aircraft to carry them overseas, as each third party is an international transport provider and has issued evidence of the carriage overseas, the supplier is considered to be the exporter.*

137. The above approach outlined for identifying whether the supplier exports for the purposes of items 1 or 2 is consistent with the approach of the Federal Court in *Australian Trade Commission v. Goodman Fielder Industries Ltd.*[31] In that case the Court focused on the verb 'send' as indicating 'that which occasioned or brought about the carriage of the commodity from one country to another'.[32]

138. The facts in the case involved the Australian Wheat Board (AWB) supplying wheat to the overseas subsidiary of an Australian parent company. The written contract named the AWB as vendor and

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[31] (1992) 36 FCR 517.
[32] (1992) 36 FCR 517 at 523.

the Australian parent company as buyer.[33] The wheat was to be dispatched directly from the AWB to the overseas subsidiary. The contracts were the 'Standard FOB Short Form Contract for Australian Wheat (Fixed Price)' prepared by the AWB. The AWB delivered the wheat directly to the ship that was chartered by the overseas subsidiary. The bills of lading were issued after the goods were loaded on board. The Australian parent company received the bills of lading but passed them onto the overseas subsidiary.

139. The Full Court examined this sale arrangement for the purpose of applying the 'export earnings' provisions of the *Export Market Development Grants Act 1974* ('the Grants Act'). The 'export earnings' of a person under the Grants Act includes consideration received for goods *sold and exported* by that person. This is similar to the requirements of items 1 and 2, that there is a supply of goods and that the supplier exports them.

140. The question at issue was whether the involvement of the Australian parent company as a concurrent principal to the sale contract was such as 'to lead to the conclusion that, within the meaning of section 3A(1)(a) of the Grants Act, it was the [Australian] parent company which sold the wheat in Australia and exported it'.[34]

141. The Court looked at a number of factors including:

- which party was responsible for selling the wheat – the AWB;
- which party was buying the wheat – the subsidiary;
- which party was designated as the shipper on the bill of lading – the AWB (the buyer agrees to pay for the carriage under a FOB contract, even though the seller may appear as shipper);
- which party delivered the goods to the ship – the AWB;
- which party received the bills of lading– they were passed onto the subsidiary by the Australian parent company;
- which party chartered the ship – the charter-parties were made with the subsidiary; and
- the payment arrangements for the sale.

[33] Beaumont, Gummow and Einfeld JJ found, as a matter of general law, that the correct characterisation of the transaction was that the AWB sold the wheat to the overseas subsidiary and that the sale was brought about by the Australian parent. The position of the AWB was protected by the inclusion of the Australian parent company as principal, so that the AWB might look directly to it in Australia in default of performance by the overseas subsidiary.
[34] *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517 at 522.

142. The Court looked at the ordinary meaning of export being 'to send commodities from one country to another using the verb "send" as indicating that which occasioned or brought about the carriage of the commodity from one country to another...'.[35]

143. The Court found that '…the wheat was sold and exported by the AWB both in a practical and commercial sense…'.[36]

144. The identification of the exporter has also been considered by the High Court of Australia in another context. In *Henty v. Bainbridge-Hawker* (1963) 36 ALJR 354 Owen J considered charges against an individual for various exporting offences committed under the Customs Act.

145. The defendant submitted that he could not be found to have been the exporter of prohibited exports because whatever goods were in fact exported were sold free on board (FOB) to an overseas buyer. The defendant claimed that his obligations ceased when the goods were placed on board the ship in Sydney and therefore the overseas buyer was the exporter.

146. In response to this submission, Owen J identified the Australian seller as the exporter, stating that:

> For the purposes of this case it is sufficient to say that if, in the case of a f.o.b. contract with an overseas buyer, the seller places the goods on board a ship bound for foreign parts and engages[37] with the shipowner to carry them to the overseas buyer and the goods are carried overseas, the seller has, in my opinion exported the goods within the meaning of the Customs Act.[38]

147. Our approach in identifying the exporter is also consistent with the approach of the New Zealand Court of Appeal in *Inland Revenue Commissioner (NZ) v. International Importing Ltd* [1972] NZLR 1095; (1972) 72 ATC 6033; (1972) 3 ATR 173. In that case the Court had to decide, for the purposes of establishing entitlement to an export incentive deduction available under the provisions of section 129B of the *Land and Income Tax Act 1954 (NZ),* whether goods sold by the respondent were exported from New Zealand by the respondent. Section 129B gave a benefit to a person that *sold and exported* the sale goods from New Zealand.

148. Richmond and Macarthur JJ commented that:

> The Legislature has not attempted for the purposes of s-129B to define the meaning of the word 'export' and the Court can do no

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[35] *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517 at 523.
[36] *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517 at 523.
[37] Here engages is not used in the sense that the seller makes the contract with the carrier for carriage at the seller's own expense. Under a FOB contract, the seller may arrange the carriage for the buyer at the buyer's expense.
[38] *Henty v. Bainbridge-Hawker* (1963) 36 ALJR 354 at 356.

> more than give to that word its ordinary meaning… and to decide as a matter of fact and degree in individual cases whether the part played by the taxpayer in bringing about the removal of the goods from New Zealand was a sufficiently immediate and effective cause of that removal to justify the description of the vendor as a sender (or taker as the case may be) of those goods out of New Zealand.
>
> Whether or not a person 'exports' goods seems to us to depend more on the actual part which he in fact played in bringing about their removal than upon the terms of the contract between himself and the buyer. It is to be noted, incidentally, that s 129B is not so worded as to require the taxpayer to be the owner of the goods at the time of export. The section only requires that he should be the owner of the goods at the time of sale.[39]

Alternative views for identifying the exporter

149. One alternative view is that the question of whether goods are exported by one entity rather than another is to be decided on narrow legal grounds involving identification of the owner of the goods at the time the goods are exported.[40]

150. For example, in the case of goods sold on FOB terms, property in the goods commonly passes when the goods are delivered by the supplier on board the ship. The result is that ownership of the goods passes to the recipient before the goods leave the port. The goods are the property of, and under the control of, the recipient. Under the alternative view the recipient therefore, is the exporter.

151. Further, under this alternative view, if the recipient were to sell the goods (already on board the ship) to a trader by transferring the negotiable Bill of Lading to the trader, the trader would then be considered the exporter. This would be as a result of the trader being the owner of the goods as the ship carrying the goods departed Australia.

152. However, items 1 and 2 of the table in subsection 38-185(1) do not state that for the supplier to be the exporter, the supplier must be the owner of the goods at the time the goods are exported.

153. Based on the principles of statutory interpretation,[41] the meaning given to the phrase 'the supplier exports' is ascertained by reference to the context and the purpose or object of the legislation in which it appears. The meaning given to this phrase is consistent with the object of the legislation, that is, to treat exports of goods as

[39] *Inland Revenue Commissioner (NZ) v. International Importing Ltd* [1972] NZLR 1095 at 1104; (1972) 72 ATC 6033 at 6041; (1972) 3 ATR 173 at 181.
[40] See *Camelo v. Britten* (1820), 4B. and Ald. 184; 105 ER 906.
[41] See *Chaudhri v. FC of T* (2001) 2001 ATC 4214 at 4216; (2001) 47 ATR 126 at 128 per Hill, Drummond and Goldberg JJ.

GST-free where the goods are actually physically exported from Australia.[42]

154. The narrow legalistic view was not applied in the New Zealand case of *Inland Revenue Commissioner (NZ) v. International Importing Ltd*.[43] Richmond and Macarthur JJ said:

> In other contexts the question whether goods have been "exported" by one person rather than another, has been decided on narrow legal grounds. *Camelo v. Britten* (1820), 4 B. and Ald. 184; 106 ER 906, is an example. We agree with Mr Somers however that no such narrow approach could be made in the present case without defeating the plain and obvious purpose of section 129B.

155. Similarly, in identifying the exporter for the purposes of Anti-dumping provisions of the Customs Act, Finn J in the Federal Court case of *Companhia Votorantim de Cellulose e Papel v. Anti-Dumping Authority and Others* (1996) 42 ALD 7[44] said;

> I do not consider that it is, or should be essential that at the time the goods actually leave the territory of the country of origin, they need to be beneficially owned by the exporter.[45]

156. The meaning given in this Ruling to the phrase the *supplier exports*, which essentially focuses on whether the supplier sends the goods out of Australia having regard to the acts of the supplier which occasion or bring about the carriage of goods from Australia to another place, ensures that section 38-185 applies as intended.

157. Another alternative view is that the exporter is identified widely, as being the party who, or that, delivers the goods to the place of export, as defined in the GST Act.[46]

158. For goods which are exported in a freight container, the place of export is defined as being the place where the goods are packed into the container. In many cases, this place could be a freight packing depot, or the supplier's premises anywhere in Australia.

159. Under this alternative view, a seller of goods to an overseas buyer would be the exporter, even if the overseas buyer takes delivery of the goods in Australia and arranges the carriage of the goods to the overseas destination. This is the case under a contract of sale on EXW or FCA terms as per Incoterms 2000, where delivery can be effected at the supplier's premises, or to a carrier acting solely at the direction of the recipient.

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[42] Refer Chapter 1 Executive Summary of the Explanatory Memorandum accompanying the A New Tax System (Goods and Services Tax) Bill 1998.
[43] See *Inland Revenue Commissioner (NZ) v. International Importing Ltd* [1972] NZLR 1095 at 1104; (1972) 72 ATC 6033 at 6041; (1972) 3 ATR 173 at 181
[44] Affirmed by majority on appeal to Full Federal Court in *Companhia Votorantim de Cellulose e Papel v. Anti-Dumping Authority and Others* (1996) 141 ALR 297; (1996) 71 FCR 80.
[45] 42 ALD 7 at 14
[46] Section 195-1.

160. We do not consider that this wide view gives effect to the policy intent. The provision requires the supplier to export because the supplier is then in the best position to know whether or not those goods are for consumption outside Australia. Further, such a view limits the operation of subsection 38-185(3), which was inserted to cover certain situations where goods are supplied to a recipient in Australia before they are exported.

161. Under this alternative view, the recipient who, or that, takes delivery of containerised goods after they are delivered to the place where they are packed, is likely to be the person who controls the sending of the goods out of Australia and gets the evidence of this. As such the recipient is more appropriately considered the exporter of the goods and subsection 38-185(3) is the relevant provision.

162. A supplier who, or that, delivers possession and control of goods to the recipient at a container packing depot in Australia, has delivered the goods in a state which allows for consumption of the goods in Australia. Therefore, the supplier who, or that, delivers goods to this 'place of export' is not necessarily the exporter.

163. However, where the 'place of export', as defined in section 195-1, is on board a ship, the delivery to this place puts the goods into a position where they are for export and not for consumption in Australia. The party who, or that, delivers the goods to the place of export in this instance is the exporter under the preferred approach.

Supplier exports – chain sales/back to back sales

164. Sometimes goods sold under a contract of sale, typically on FOB or CIF terms, are resold, one or more times, before the goods reach the designated port of destination. For example, Aus Co sells goods to Japan Trading Co on FOB terms to Japan. Before the ship with the goods on board departs Australia for Japan, Japan Trading Co sells the goods to Japan Manufacturing Co on CIF terms to Japan. Resales of this kind may be referred to as 'chain sales' or 'back to back sales'.

165. In some cases, the chain of sales occurs before or as the goods are loaded onto a foreign bound ship. For example, this is the case where each supply in the chain is on FOB terms.

166. In other cases, the chain of sales occurs after the goods are loaded, with subsequent sales occurring many times before the goods arrive at the destination port. For example, goods may be on-sold on CIF terms even though the goods are still at sea.

167. Each supply in the 'chain' is examined individually. Where a supply of goods in that chain is connected with Australia, the criteria

outlined in paragraph 109 for identifying if a supplier exports for the purposes of item 1 or 2 are applied to that supply.

168. A supply is connected with Australia under subsection 9-25(1) where the goods are delivered, or made available, in Australia to the recipient of the supply. Therefore, a supplier that delivers goods at a place in Australia, including on board a ship in Australia, makes a supply connected with Australia. This is regardless of whether the supply is the first in a chain of supplies, or whether it is one of the subsequent supplies in the chain. The location of either the supplier or the recipient is not relevant – the essential criterion of subsection 9-25(1) is the place the goods are delivered.

169. It follows that any sale made on EXW, FCA, FAS or FOB terms, where the place or port of delivery is in Australia, is a supply connected with Australia under subsection 9-25(1).

170. However, where the supplier under such a contract is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport those goods to a destination outside Australia, the supplier exports. The supply is a GST-free export of goods provided the other requirements of items 1 or 2 are met.

171. This same criteria for determining whether a supplier exports within the meaning of items 1 or 2 is applied to each supplier in the chain. This may lead to several suppliers in a chain being considered an exporter for the purpose of each supply.

172. For example, where there are back to back contracts on FOB terms, each supplier is responsible for delivering the goods on board a ship in Australia contracted by another party to carry them to a foreign port. The first supplier actually transports the goods to the port and delivers them on board the foreign bound ship. The second supplier fulfils its responsibility to deliver the goods on board the ship by contracting with the first supplier to do so. Both sales in the chain are supplies of goods connected with Australia. The goods are physically delivered in Australia to the recipient. Both suppliers are responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport those goods to a destination outside Australia. In the case of each supply, the supplier exports the goods, and, therefore both back to back sales are GST-free, provided the other requirements of section 38-185 are met.

173. A supply is also connected with Australia under subsection 9-25(2) where the supply involves the goods being removed from Australia.

174. A supply involves goods being removed where goods located in Australia, are, as part of the supply, transported to, and delivered at a place outside Australia.

175. Therefore, a supplier makes a supply connected with Australia under subsection 9-25(2) where the supplier, as a condition of the sale of goods contract, enters into a contract for the international transportation of the goods from Australia to a place outside Australia.

176. It follows a supplier that sells goods under CIF, CPT or DDP terms where the named place that the goods are sent to is overseas, makes a supply that involves the removal of those goods from Australia.

177. However, where a supplier on such terms is the second (or a subsequent) supplier in a chain of supplies on such terms, the second (and any subsequent) supplier does not actually enter into the contract for international transportation as part of their supply. This is because the contract of carriage is entered into as a result of the first sale in the chain. Therefore, the second supply (and any subsequent supply) does not involve the goods being removed from Australia, as the goods are removed under the contract of carriage entered into as part of the first supply in the chain. The second supplier (and any subsequent supplier in the chain) does not need to remove the goods as part of their supply, they simply need to deliver them at the overseas port. The second and subsequent supplies are not connected with Australia. Those supplies are outside the scope of the Australian GST law.

178. In summary, where there are two or more back to back FOB sales, each supply in that chain is connected with Australia because in each case the goods are delivered to the recipient in Australia. However, the supplier in each case is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport those goods to a destination outside Australia, and, therefore, exports the goods.[47] Each supply in the chain is a GST-free export, provided the other requirements of item 1 or 2 are met.

179. Where there are two or more sales on CIF terms in a chain of supplies, the first supply in the chain is a supply that involves removal from Australia as the first supplier must, as part of the supply, transport the goods out of Australia. The second supply is not connected with Australia, as the goods are removed from Australia as part of the first supply. Under the first supply, the supplier contracts at the supplier's own expense with an international carrier for the transportation of the goods to a destination outside Australia and exports the goods from Australia. Provided the other requirements of item 1 or 2 are met, the supply is a GST-free export of goods. The second and any subsequent supplies are outside the scope of the Australian GST law as the supplies are not connected with Australia.

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[47] To be GST-free, the other requirements of section 38-185 must be met, such as the 60 day timing requirement.

180. Where there are a chain of supplies, the first on FOB terms and the second on CIF terms, the first supply is connected with Australia, but the supplier exports. The second sale is not connected, as it does not involve the goods being removed. There can only be one contract of carriage involving removal of the goods from Australia. As a result of the first supply the recipient contracts for carriage of the goods to a destination outside Australia. Under the second supply, the buyer simply pays the price as provided in the contract of sale price to have the goods delivered to a destination outside Australia. If the second supply did not occur, the goods would still be removed as a result of the actions of the recipient of the first supply.

Example 6 – chain sales of goods on FOB and CIF terms

181. *As in example 1, Oz Wool delivers wool on board a ship in Melbourne according to the FOB terms of sale to China Knits. The wool is consigned to Hong Kong. However, before the wool was loaded, China Knits had arranged to resell the goods to Hong Kong House (a trading company) also on FOB terms. As the goods cross the ships rail, they are delivered instantaneously to China Knits, and to Hong Kong House. While the ship is travelling out of the Port of Melbourne, Hong Kong House on-sells to Asia Textiles Co on CIF terms, for delivery at the port in Hong Kong. The negotiable bill of lading passes through the various hands to Asia Textile Co which takes delivery of the wool in Hong Kong.*

182. *Diagrammatically this is represented as follows*:

Oz Wool ➨China Knit ➨ Hong Kong House ➨Asia Textiles.

FOB (Melb) FOB (Melb) CIF (Hong Kong)

183. *The supplies by Oz Wool and China Knits are connected with Australia under subsection 9-25(1). The goods are delivered in Australia. Oz Wool and China Knits make GST-free supplies, as both suppliers export the wool, within the meaning of section 38-185.*

184. *The supply by Hong Kong House is not connected with Australia. The goods are physically delivered in Hong Kong, and the supply does not involve the goods being removed from Australia. Hong Kong House as a buyer under the second supply has entered into the contract of carriage to transport those goods to Hong Kong. Hong Kong House removes the goods from Australia as a result of its purchase from China Knits, and has to remove those goods from Australia regardless of whether it on-sells to Asia Textiles. The sale arrangement with Asia Textiles could just as easily occur while the goods are at sea, or as the goods are arriving in Hong Kong. The supply by Hong Kong House to Asia Textiles does not, therefore, involve removal from Australia.*

Example 7 – chain sales of goods on CIF terms

185. *Oz Cars is an Australian car manufacturer. Oz Cars enters a contract with Global Cars for the supply of 1000 motor vehicles. The terms of sale are CIF for shipment to Turkey. Global Cars has won a contract to supply all vehicles to the Government of Turkey. Global also supplies the goods CIF to the port in Turkey.*

186. *This is represented diagrammatically as follows:*

Oz Cars ➨ Global Cars ➨ Government of Turkey

CIF (Turkey) *CIF (Turkey)*

187. *Oz Cars arranges to transport the cars to the port of Sydney and enters a contract of carriage to ship the cars to Turkey. Oz Cars loads the goods on board, obtains a bill of lading and completes its supply by passing the negotiable bill to Global. Oz Cars' supply is connected with Australia, being a supply that involves removal. Oz Cars makes a GST-free export supply. Global's supply is not connected with Australia. The cars are neither delivered, nor made available, in Australia and the supply does not involve those goods being removed from Australia.*

Export before or within 60 days

188. A supply of goods is GST-free if the supplier exports the goods before, or within a 60 day period (or such further period as the Commissioner allows). The law requires the goods to be actually exported before or within the time period.

189. The 60 day period commences on the day after the earlier of:

(a) the day on which the supplier receives any of the consideration for the supply; or

(b) the day on which the supplier gives an invoice for the supply.

190. However, in the case of supplies for which the consideration is provided in instalments, where the contract requires the goods to be exported, the period commences on the day after the earlier of:

(a) the day on which the supplier receives any of the final instalment of the consideration for the supply; or

(b) the day on which the supplier gives the invoice for that final instalment.

191. Consideration is provided in instalments where the contract provides for the total amount of consideration for the supply to be paid in two or more separate instalments. This may occur, for example, where the goods are being manufactured and payment is made on a periodic or progressive basis. It could also occur where the contract

provides for payment of an initial instalment with the balance payable at a later date.

192. A contract requires the goods to be exported where there is an express or implied term in the contract that the goods are to be exported. Information contained in the contract which supports the requirement to export the goods may include:

(a) the overseas destination where the goods are to be delivered;

(b) the identity and location of the buyer;

(c) obligations to carry out export clearance formalities;

(d) obligations in respect of transport costs;

(e) obligations in respect of import costs and formalities in a foreign country; and

(f) use of an Incoterm.

Example 8 – consideration is provided in instalments

193. *Dinkum Designs Pty Ltd is an Australian manufacturer of outdoor clothes hoists. The company enters an agreement to produce 5000 hoists for a United States ('US') recipient intending to wholesale the goods in the US. The contract provides for the consideration to be provided in five equal instalments. All 5000 are to be sent in one consignment, and the contract sets out that the Australian supplier is responsible for the cost of insurance and freight to an address in California. This supply falls under item 2, and the 60 day period commences when the final instalment is paid*.

194. To establish whether or not the 60 day timing requirement is met, it is necessary to establish when export occurs.

195. In *Wesley-Smith v. Balzary*[48], Forster J considered that export in the context of the Customs Act is capable of occurring at two different times, depending on whether it is to be determined in relation to the imposition of duties (the commercial context) or in the prohibition of exports context.

196. In the commercial context, his Honour said:

[48] See *Wesley-Smith v. Balzary* (1976-77) 14 ALR 681.

> If duty is to be imposed and duty is to be collected, or if the goods are to be free of duty, this necessarily must occur at the point of leaving Australia and for this purpose the goods may be said to be exported at the moment of leaving Australia with the intention that they be landed elsewhere out of Australia.[49]

197. In considering whether a prohibited export has occurred, his Honour said:

> Where the export of something prohibited is concerned, the meaning of export must, I think, involve the actual landing of the goods elsewhere out of Australia.[50]

198. Under the export provisions of the GST Act, it must be established that goods have been physically exported so that GST is not payable on the supply of those goods. This is similar to the commercial context referred to in *Wesley-Smith v. Balzary*.

199. Accordingly, the point at which goods are exported for the purposes of items 1 and 2 is when the goods physically leave Australia with the intention of being landed at a place outside Australia.

200. Presently, goods can leave Australia on board a ship or aircraft.[51] Thus the time at which goods are exported is the time at which the ship or aircraft with the goods on board departs its final Australian port or airport and clears the territorial limits of Australia (refer the definition of Australia discussed at paragraphs 98 to 105).

201. The placing of goods on board a ship or into the control of a ship or aircraft operator does not constitute the export of those goods. Until the ship or aircraft leaves Australia with the goods on board, export has not occurred and, therefore, there is not yet an exporter.

202. If the ship or aircraft with the goods on board does leave Australia, the goods are exported and this is the time of export. The actions which took place earlier to bring about the export can identify whether or not the 'supplier exports' for the purposes of items 1 and 2. The actions of the supplier which we have outlined as identifying when the supplier exports are the entering into of an international contract of carriage, or delivering the goods to the control of a ship or aircraft operator (see paragraph 109). Once these actions have been completed, the goods can be exported.

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[49] (1976-77) 14 ALR 681 at 688.
[50] (1976-77) 14 ALR 681 at 688.
[51] There maybe other methods of exporting goods in the future, for example, pipelines, cables, or spacecraft, but this Ruling does not address these potential modes of export. Goods which are themselves a ship or aircraft may be exported under their own power. In this case the ship or aircraft is exported when it departs its final Australian port or airport and leaves Australia for a destination outside Australia.

Example 9 – ship departs final Australian port for a destination outside Australia

203. *A company in Sydney agrees to sell coal to a customer in Japan. Under the terms of sale, the Sydney company is responsible for loading hatches of coal on a foreign bound vessel at the Port of Gladstone and the Port of Hay Point. The coal is loaded by the supplier (or a party engaged by the supplier) at Gladstone and the vessel travels up to the Port of Hay Point where the supplier loads the remaining hatches of coal before departing for Japan. Upon leaving the Port of Hay Point, which is the ship's final Australian port of call, all of the coal on board the ship is exported when the vessel departs Australian territorial waters. The ship later arrives in Japan where the coal is unloaded.*

204. The timing requirement in item 1 and 2 is satisfied if the ship or aircraft, with the goods on board for landing at a place outside Australia, departs its final Australian port or airport and leaves Australia, before the end of the 60 day period.

205. A supplier will not always be aware of the actual time of export. The Commissioner, therefore, accepts that the timing aspect of the requirement is met if, before the end of the 60 day period, the supplier hands over possession of the goods to an international transport provider[52], that the supplier has contracted to deliver the goods to an overseas destination.

206. Also, where the supplier responsible for delivering the goods to the operator of the ship or aircraft, delivers the goods to the ship or aircraft operator before or within the 60 day period, the Commissioner accepts that the timing requirement is met. However, this is provided that the supplier has completed all of the other actions necessary on the part of the supplier to export the goods, for example, obtaining necessary permits and Customs approvals where applicable.

207. The supplier needs documents evidencing receipt of the goods by the shipping line, aircraft operator or other international transport provider, and of the contract for carriage of the goods to a destination outside Australia (e.g., a consignment note, certificate of shipment, bill of lading, air waybill or house bill).

208. If the supplier is able to meet all the above requirements, but the ship or aircraft departs its final Australian port or airport and leaves Australia after the end of the 60 day period, the Commissioner grants an automatic extension equal to the additional time required for the export to occur.

[52] International transport provider refers to someone who provides or arranges for the international transport of goods and includes a freight forwarder, consolidator, air express courier, postal agency, etc.

Example 10 – supplier delivers goods to international transport provider within 60 days

209. *As in example 4, Bewdy Bats sells a quantity of cricket bats to an English buyer at a price that includes freight. The 60 day period commences when the recipient orders the goods, as payment in full is made at this time. The Australian supplier contracts with its freight forwarder to arrange delivery of the goods to the English buyer's address. The supplier delivers the goods to the freight forwarder 50 days later and is provided with a delivery docket acknowledging receipt of the goods. The freight forwarder later arranges for the bats to be shipped LCL (less than container load), and issues a house bill to Bewdy Bats. As the Australian supplier has delivered the goods to an international transport provider before the end of 60 days, and all other export formalities are complete, the supplier satisfies the 60 day timing requirement. If in fact the house bill indicates that the ship departed on the 63rd day, the Commissioner automatically extends the period by 3 days.*

Example 11 – supplier hands over goods to an international air express courier within 60 days

210. *An Australian supplier exports goods through an international air express courier and is issued with a consignment note which has no reference to the date that the flight leaves. The supplier later receives confirmation of delivery of the goods to the overseas customer. Provided the goods were handed over to the courier before the end of the 60 day period, the Commissioner accepts that the timing requirement is satisfied, even though the Australian supplier is not aware of the actual time of export.*

211. Suppliers unable to deliver the goods on board the ship or to the operator of the ship or aircraft, or unable to hand over possession of the goods to an international transport provider[53] within the 60 day time period, may apply to the Commissioner for an extension of time. The application should be in writing clearly setting out the length of the extension required and the circumstances why an extension to the 60 day period is being requested.

212. The Commissioner will exercise this discretion where there are physical, practical or commercial circumstances which reasonably explain the delay, provided the Commissioner is satisfied that the goods will be exported. Applications for extension should be lodged before the expiry of the normal 60 day period, or immediately upon discovery that the time period will not be, or has not been met.

[53] See footnote 52 for the meaning of 'international transport provider'.

Example 12 – supplier requests extension of time for export to occur

213. *An Australian manufacturer of specialised machine components contracts to supply goods to one of their regular foreign customers. An invoice issues and the 60 day period commences. The components are produced, but the recipient advises that delivery is not required for three months due to a change in production schedules. The components are stored until the new delivery date. In this case, the supplier needs to make a written request for an extension of time for the supply of those goods to be GST-free under item 1 of subsection 38-185(1).*

Example 13 – supplier requests extension of time for export to occur

214. *Overseas customers subscribe to an Australian publisher of journals that are circulated on a monthly basis. The subscription period is for twelve months and the journals are to be forwarded to the overseas subscribers monthly. The subscription is paid in full at the beginning of the year and the 60 day period commences. The Australian publisher applies to the Commissioner in writing for an extension of the 60 day period because at least ten of the magazines are to be exported after the 60 days have expired. The Commissioner, by a written response to the publisher, extends the period until the last publication is issued. The extension applies only to this particular publisher who has requested it. Other suppliers in similar circumstances need to apply for their own individual extensions.*

215. The supplier must have sufficient evidence to show that the timing requirement is met. Documentary evidence is discussed further at paragraphs 295 to 312.

Adjustment events

216. If a supplier having supplied goods GST-free, subsequently becomes aware that the goods were not exported, that is, the goods were not sent from Australia to a place outside Australia, this gives rise to an adjustment event. An adjustment event includes an event which has the effect of causing a supply to become a taxable supply.[54]

Example 14 – goods for export (FOB terms of sale) redirected to a place in Australia

217. *As in example 1, Oz Wool Corporation contracts to sell a bulk shipment of wool to China Knits Co, with price and delivery agreed FOB Melbourne on the basis that the goods are exported. The ship's scheduled route is Hong Kong–Melbourne–Brisbane-Hong Kong. Upon delivery on board the ship, Oz Wool is advised by way of details*

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[54] Paragraph 19-10(1)(c).

on the bill of lading that the wool is to be unloaded in Brisbane. The recipient directs Oz Wool to forward the bill of lading to its subsidiary company in Brisbane, as a change in production arrangements has resulted in the wool being redirected for delivery to China Knits' Australian operation. The wool has not been exported. The supply is a taxable supply. Because the original terms required Oz Wool to send the goods to Hong Kong, it was reasonable for Oz Wool to account for the supply as GST-free. The change in circumstances means that an adjustment event occurs. An event has occurred which has the effect of causing the supply to become a taxable supply.

218. An adjustment event also arises if the goods are not exported before the end of the 60 day period (or such further period as allowed by the Commissioner).

219. If the adjustment event occurs in the same tax period to which the GST on the supply is attributable, an adjustment does not arise. However, if the GST on the supply would have been attributable to an earlier tax period, the supplier has an increasing adjustment equal to the amount of GST now payable on that supply.

220. Adjustments for adjustment events are attributed to the tax period in which the supplier becomes aware of the adjustment.[55] This would usually be when the proposed arrangements change, such that the supplier will not export the goods, or when the 60 day period expires and the supplier has not in fact exported the goods.

Items 3 and 4 – Export of aircraft or ships

221. Item 3 applies to the export of aircraft or ships. Item 4 applies where, in relation to the supply of an aircraft or ship, the consideration is provided in instalments under a contract that requires the aircraft to be exported.

222. A supply where the consideration is provided in instalments under a contract that requires the goods to be exported, has the same meaning as described in respect of item 2 at paragraphs 191 to 193.

223. A supply of an aircraft or ship is GST-free where the elements of item 3 or 4 of the table in subsection 38-185(1) are satisfied. The elements are:

(a) a supply of an aircraft or ship;

(b) the recipient of the aircraft or ship exports it from Australia; and

(c) the export occurs within the specified period.

[55] Subsection 29-20(1).

A supply of an aircraft or ship

224. The term ‘aircraft’ takes its ordinary meaning. The term ‘ship’ is defined in section 195-1 as ‘any vessel used in navigation, other than air navigation’.

Recipient exports

225. The recipient exports the aircraft or ship under its own power if the recipient, or a party engaged by the recipient, physically navigates the aircraft or ship to a destination outside Australia.

226. If the supplier exports the ship or aircraft item 3 or 4 do not apply. However, the supply may be GST-free under item 1 or 2.

227. If the recipient exports the ship or aircraft <u>not</u> under its own power, item 3 does not apply. However, the supply may be GST-free under item 1 or 2 if the requirements of subsection 38-185(3) are satisfied.

Export within 60 days

228. A supply of an aircraft or ship is GST-free under item 3 or 4 if the recipient exports the aircraft or ship from Australia within a 60 day period (or such further period as the Commissioner allows).

229. Under item 3 the 60 day period commences the day after the recipient (or another person at the recipient’s request) takes physical possession of the aircraft or ship. This refers to taking possession of goods in the ordinary course of completing the contractual obligations of the supply. The recipient is considered to take physical possession where a third party takes possession on behalf of the recipient, at the recipient’s request.

230. Under item 4 the recipient must export the ship or aircraft before, or within 60 days (or such further period as the Commissioner allows) after, the earliest day on which one or more of the following occurs:

- (a) the supplier receives any of the final instalment of the consideration for the supply;
- (b) the supplier gives an invoice for the final instalment; or
- (c) the supplier delivers the aircraft or ship to the recipient or (at the recipient’s request) to another person.

231. We consider that the event referred to in (c) in paragraph 230, equates to taking possession of goods in the ordinary course of completing the contractual obligations of the supply.

Example 15 – recipient hires and subsequently purchases a yacht

232. *Sails & Sales Marine is a business operating in Cairns, specialising in renting and selling yachts to tourists. A small craft is hired*[56] *to Antonio, an experienced Spanish sailor. After the end of a 28 day hire period, instead of returning the yacht, Antonio offers to buy the boat to sail back to Spain. Sails & Sales sells the yacht, and Antonio exports the yacht from Darwin. The 60 day period commences when Antonio takes physical possession of the yacht as part of the sale of the yacht. The taking of possession when the yacht was initially hired is not taking of possession within the meaning of item 3. Sails & Sales Marine is sent a copy of the Customs export documentation and the yacht's final certificate of clearance as evidence of export.*

233. A ship or aircraft is exported when the ship or aircraft departs its final Australian port or airport and leaves Australia for a destination outside Australia. Upon departure, there must be an intention that the ship's next port of call or aircraft's next airport will be outside Australia. Thus to satisfy the timing requirement the aircraft or ship must leave Australia before the end of the specified period.

234. Where the ship or aircraft cannot be exported within the 60 day time period, application may be made to the Commissioner seeking an extension of time for the export to occur. The application should be in writing clearly setting out details of the supplier, the recipient and the circumstances explaining why an extension to the 60 days is required. The supplier or the recipient may request an extension of time, however, the supplier must be made aware if an extension of time is granted at the recipient's request.

235. A supplier needs to be able to demonstrate that the ship or aircraft was exported. The Commissioner accepts as sufficient evidence a copy of the certificate of clearance issued by Customs indicating a foreign port as the destination of the particular ship or aircraft. The requirement to keep documentary evidence is discussed in more detail at paragraphs 295 to 301 and 313 to 317.

Adjustment events

236. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit, this gives rise to an adjustment event (refer to paragraphs 216 to 220).

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[56] The supply of that craft by way of hire is a taxable supply subject to GST.

Subsection 38-185(3) – supplier treated as exporter for the purposes of items 1 and 2

237. If a party other than the supplier exports the goods the requirement of items 1 and 2 that the supplier exports is not satisfied. The Commissioner’s interpretation of what a supplier needs to do, to be considered the exporter, is outlined at paragraph 109. If the recipient exports the goods items 1 and 2 may still be satisfied if subsection 38-185(3) applies.

238. Subsection 38-185(3) operates to treat the supplier in certain circumstances as having exported the goods when in fact the recipient exports the goods. Where the subsection applies the supply of goods may be GST-free under items 1 or 2.

239. Specifically, the five requirements which must all be met for subsection 38-185(3) to apply are:

(a) before the goods are exported, the supplier supplies them to an entity that is not registered or required to be registered; and

(b) that entity exports the goods from Australia; and

(c) the goods have been entered for export within the meaning of section 113 of the Customs Act; and

(d) since their supply to that entity, the goods have not been altered or used in anyway, except to the extent (if any) necessary to prepare them for export; and

(e) the supplier has sufficient documentary evidence to show that the goods were exported.

240. Paragraphs 248 to 290 provide guidance as to how these elements may be satisfied. Subsection 38-185(3) also provides that if the goods are reimported the supply is not GST-free unless the reimportation is a taxable importation.

241. The opening words of subsection 38-185(3) make it clear that the subsection does not limit the operation of items 1 and 2, but rather the subsection expands it. In addition to satisfying all the elements in subsection 38-185(3), a supplier must also satisfy the other requirements of item 1 or 2, as the case may be.

242. The Commissioner’s interpretation of what a supplier needs to do to be considered the exporter is outlined at paragraph 109 above. Where the ‘supplier exports’ the goods, there is no need to examine subsection 38-185(3). This is the case even if the recipient also satisfies the criteria to be an ‘exporter’ of the goods.

Example 16 – supplier exports – subsection 38-185(3) is not relevant

243. *As in example 1, Oz Wool sells a bulk shipment of wool to China Knits, with delivery to be made FOB Melbourne. Title to the wool and risk passes to the recipient upon delivery over the ship's rail, such that it is clear that Oz Wool has supplied the wool to China Knits before the goods are exported. The wool is exported when the ship departs its final Australian port and leaves Australia. Oz Wool is the exporter of the wool under item 1, as Oz Wool is responsible for delivering the goods on board a ship which has been engaged to carry them to Hong Kong. Oz Wool does not need to look to subsection 38-185(3). Even if China Knits on-sells the wool FOB Melbourne Oz Wool exports the goods under the first supply. China Knits exports under the second supply – refer paragraphs 164 to 187 on the GST treatment of 'chain sales'.*

244. Where the 'supplier exports' the goods, there is no need to examine subsection 38-185(3), even if the supplier supplies the goods before they are exported.

Example 17 – supplier exports – subsection 38-185(3) is not relevant

245. *As in example 4, Bewdy Bats receives an order from an English cricketer for several bats. The English cricketer is holidaying in Australia at the time the order is placed and chooses the specific bats at one of Bewdy Bats' retail outlets. The bats are paid for immediately, but rather than taking them from the shop and carrying them on the aircraft, the tourist negotiates an arrangement whereby the supplier arranges for delivery of the goods to his home. At Bewdy Bats' expense, the bats are couriered to the customer's address in the UK. In this case, the supplier exports the goods and subsection 38-185(3) is not relied upon.*

246. However, where the supplier is not the exporter, the supplier's circumstances must satisfy the requirements of subsection 38-185(3).

Example 18 – recipient exports – subsection 38-185(3) is relied upon

247. *As in example 3, Black Stump Coal sells 10,000 tonnes of coal under an Ex-works contract to a foreign buyer. The buyer takes delivery of the commodities at the supplier's premises in central Queensland. The buyer then transports the coal to the wharf and loads it on board a foreign bound ship. As the buyer is the exporter, Black Stump Coal needs to satisfy the elements of subsection 38-185(3) if the supply is to be GST-free.*

Paragraph 38-185(3)(a) – supply to unregistered entity

248. Paragraph 38-185(3)(a) is satisfied where goods are supplied to an entity before they are exported, and the recipient entity is not registered or required to be registered.

249. For the purposes of paragraph 38-185(3)(a), a supplier supplies goods to an entity where the goods are delivered according to the contract of sale with that entity. This would usually correspond with the time at which the supplier's obligations under the contract are fulfilled, and the goods become at the risk of the buyer/recipient.

250. For example, under an Ex-works contract of sale, the seller must place the goods at the disposal of the buyer at the named place of delivery (commonly the seller's premises), not loaded on any collecting vehicle, on the date or within the period agreed, or if no time is agreed, at the usual time for delivery of such goods. The seller generally must bear all risks of loss of, or damage to, the goods until such time as they have been delivered, after which the supplier's obligations cease.

251. Where a supplier hands over physical possession of goods to an intermediate entity who is not buying the goods (such as a freight forwarder, consolidator, transport provider), the supplier has not made a supply of the goods to that entity.

252. For example, a contract of sale between the supplier and the recipient may require delivery of the goods to be made to a third party in Australia (such as a carrier engaged by the buyer/recipient).[57] When a supplier makes such delivery we consider that the supplier has supplied the goods to the recipient, rather than to the third party. The goods are only being delivered to the third party and not supplied.

Example 19 – delivery to intermediary and supply to recipient

253. *Pierre, a French wine connoisseur, buys the finest wines from all over the world. To reduce his freight costs on the many Australian wines he buys, Pierre engages an Australian freight consolidator. Pierre orders 30 cases of wine from one of his Australian suppliers, Koala Valley Winery, with delivery to be made to the consolidator in Adelaide. Once delivery is made to the consolidator, Koala Valley has no further obligations and is entitled to payment for the wine. The consolidator holds the 30 cases on behalf of Pierre, until a full container load is received, upon which the consolidator, in accordance with Pierre's instructions, sends the wine to France. Koala Valley, by delivering the goods to the consolidator, has supplied them to Pierre.*

[57] This may occur under a FCA contract.

254. Under paragraph 38-185(3)(a), it is also a requirement that the recipient of the supply is not registered, and that the recipient is not required to be registered for GST.

255. A supplier is able to ensure that a supplier is not registered by checking the Australian Business Register.[58]

256. A supplier can not be treated as having exported the goods under subsection 38-185(3) if the goods are supplied to a registered entity. This is regardless of the purpose for which that entity is registered. In these circumstances, even if the recipient exports the goods, the supply is a taxable supply. A registered entity that exports goods may be entitled to an input tax credit for the acquisition.

257. An entity is required to be registered if the entity is carrying on an enterprise and makes supplies connected with Australia to a value of $50,000 or more per year.[59]

258. The supplier must be satisfied, on reasonable grounds, that the entity it supplies to is not required to be registered. Where a supplier is not in a position to be aware of these circumstances, enquiries should be made of the recipient.

259. The Commissioner accepts that the supplier has reasonable grounds to be satisfied, if the entity has provided a signed written statement, declaring that the entity is not required to be registered. This is only accepted where the supplier has no reason to believe that the statement is not accurate.

Example 20 – supply of goods to an entity that is not registered or required to be registered

260. *As in example 18, Black Stump Coal sells 10,000 tonnes of coal under an Ex-works contract to a foreign buyer/recipient. The recipient exports the goods. Subsection 38-185(3) may apply. Black Stump Coal searches the Australian Business Register and finds that the recipient is not registered. However, as Black Stump is not aware of whether the buyer/recipient is required to be registered, the Australian supplier obtains a signed declaration from the recipient stating that the recipient does not make supplies connected with Australia and is not required to be registered for GST. We accept that the supplier has reasonable grounds to believe that the requirements of paragraph 38-185(3)(a) are satisfied.*

[58] A person may do this at www.bep.gov.au or www.abr.gov.au.
[59] See sections 23-5 and 23-15. The annual turnover threshold for a non-profit body is $100,000.

Paragraph 38-185(3)(b) – that entity exports the goods

261. Paragraph 38-185(3)(b) is satisfied if *the recipient* of the supply *exports* the goods from Australia.

262. Consistent with the meaning we give to the phrase the 'supplier exports' (refer paragraphs 109 above), the requirement that the recipient exports the goods is satisfied where either:

(a) the recipient contracts at the recipient's own expense with an international carrier for the transportation of the goods to a destination outside Australia; or

(b) the recipient is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport those goods to a destination outside Australia.

263. The recipient may satisfy the requirements by engaging an international transport operator, such as a freight forwarder, consolidator, air express courier or postal agency to deliver the goods to the ship or airline operator. Similarly, the recipient may enter a contract of carriage to a foreign destination through an agent, such as a freight forwarder etc.

Example 21 – recipient exports

264. *As in example 19, Pierre engages an Australian freight consolidator to arrange for the export of wine on his behalf. The wine is shipped to France. Pierre, the recipient, exports the wine.*

Paragraph 38-185(3)(c) – entered for export

265. Under paragraph 38-185(3)(c), the goods supplied must be entered for export within the meaning of section 113 of the Customs Act.

266. The Customs Act requires most goods that are to be exported to be reported to Customs on an entry for export. An entry for export is a document lodged manually or electronically with Customs that provides details of the goods to be exported and their destination. Goods are taken to be entered when Customs electronically transmits an export entry advice back to the person who lodged the export entry, or for paper entries, when a Customs officer stamps the entry as being received.[60]

267. Under the Customs Act, an export entry is not required for certain goods, such as goods exported as personal effects in accompanied baggage, or low value exports. These goods must,

[60] Subsections 114(6) and 119D(3) of the Customs Act, and Regulation 99 of the Customs Regulations.

nevertheless be entered for export for paragraph 38-185(3)(c) to be satisfied.

268. It is not necessary that it be the supplier who, or that, enters the goods for export, however, the supplier needs to be able to substantiate that the entry was made.

269. If the supplier has a record of the Export Clearance Number (ECN) in respect of the goods, the supplier is able to show that the goods were entered for export. If the supplier does not have an ECN, the Commissioner accepts the evidence of actual export (such as transport documents) as evidence that an export entry was lodged, provided Customs requires an export entry for the particular goods. However, where Customs do not require an export entry (see paragraph 267), the supplier is required to have a record of the ECN to substantiate the export entry.

Paragraph 38-185(3)(d) – the goods have not been used, altered, etc.

270. Paragraph 38-185(3)(d) is satisfied where the goods, since their supply, have not been altered or used in any way except to the extent necessary to prepare them for export.

271. Pre-export preparation such as packaging, wrapping, cleaning, disinfecting, dismantling, or testing is considered necessary to prepare the goods for export where it is not reasonable, given the nature of the goods, to export those particular goods without carrying out the relevant activity.

272. An example of pre-export preparation that is not necessary for export, is carrying out taxidermy on hunting trophies while in Australia. However, merely drying a trophy for export to an overseas taxidermist is an alteration, but one necessary for export and as such, satisfies paragraph 38-185(3)(d).

273. Any use of the goods which is essentially the same as the ultimate intended use of the goods is considered to be more usage than that necessary to prepare them for export. For example, paragraph 38-185(3)(d) is not satisfied because the goods are used prior to export where a racehorse is being trained for racing, or barrier tested, in Australia.

Example 22 – preparation of goods for export

274. *A New Zealand racehorse trainer comes to Australia and buys a thoroughbred yearling at auction. While in Australia, the trainer also buys a second hand horse float, and some new saddles, bridles, and halters. Using the new equipment, the horse is broken in, partly trained and barrier tested before being exported. The horse float is not used after purchase, other than being towed by car to the wharf*

where it is dismantled and packed into a container for export. Due to its earlier contact with animals, the float is disinfected.

275. *The breaking in of the horse is not considered necessary to prepare the horse for export, since, as a yearling, the horse is mature enough to be handled by transporters. Similarly, the training and barrier testing amounts to use of the horse and of the saddles, bridles, and halters which is essentially the same as the ultimate intended use of the goods. The towing of the horse float is a use necessary as part of its export, and similarly the treating (disinfecting), dismantling and packing is necessary to prepare the float for export.*

276. The supplier must be satisfied on reasonable grounds that the goods supplied have not been used since their supply for a purpose other than is necessary to prepare them for export.

277. In the case of goods which are packaged or containerised while still in the control of the supplier, or where delivered directly to a transport provider by the supplier, it is reasonable to conclude that the goods will not be used.

278. In the case where goods are supplied in a form that allows the goods to be easily used, the supplier should obtain a declaration from the recipient that the goods will not be used. If there is no information to the contrary, the Commissioner accepts this as evidence that the requirement in paragraph 38-185(d) is met.

Paragraph 38-185(3)(e) – sufficient documentary evidence

279. A supplier is required to have sufficient documentary evidence to show that the goods were exported. This evidence does not usually come into existence at least until the goods are in the process of being exported. Evidence that simply demonstrates that it is intended that the goods be exported is not sufficient.

280. Where the supplier is the entity that actually exports the goods, the supplier receives evidence that shows that the goods are exported. However, where the supplier is treated as the exporter under subsection 38-185(3), the recipient is the exporting entity and the supplier will only know that the goods have been exported if the recipient provides the supplier with evidence of export. Thus, the GST law specifically requires the supplier to obtain and hold such evidence.

281. The onus is on the supplier to obtain evidence that the goods were exported. If a supplier does not obtain and hold sufficient evidence to show that the goods have been exported, that is, the goods physically have left Australia on board a ship or aircraft for landing at some place outside Australia, the supplier cannot be treated as having exported them for the purposes of items 1 and 2. The supply is not GST-free.

282. Provided that there is no information to the contrary, a supplier will have sufficient documentary evidence to show that goods were exported where the documents held by the supplier provide a reasonable basis for an independent party to conclude that the goods were exported.

283. The information normally contained in the following documents would typically demonstrate that the goods have been exported:

(a) commercial documents in relation to the supply that identify the supplier, the recipient, the goods and the payment arrangements. This could include purchase orders, invoices, receipts, delivery dockets, banking records. The commercial documents should clearly link to the transport documents.

(b) transport documents of the kind described in the table below.

Method of Export	**Document**	**Evidences**
Recipient engages shipping line or airline	• Bill of lading • Sea waybill • Air waybill	• Goods received by the shipping line or aircraft operator. • Goods consigned to a foreign destination.
Recipient engages freight forwarder, consolidator, air express courier	• House bill (air or sea) • Consignment note • Certificate of shipment • Proof of Delivery (POD)	• Goods received by international transport provider/arranger. • Goods consigned to a foreign destination.
Recipient posts	• Postal certificate	• Goods received for posting to a foreign destination.

Method of Export	Document	Evidences
Recipient exports as accompanied baggage	• Customs stamped proof of export (for example, export entry or stamped customs traveller guide form) • Airline excess baggage receipts describing the goods	• Goods carried through outwards customs barrier and sighted by Customs officer. • Goods checked in as luggage on board a passenger plane.

284. The transport documents need to include information that identifies the goods, the destination, and the date of departure from Australia. These documents will be issued by an international transport provider, or an arranger of international transport services, as evidence of that person's agreement to transport the goods.

285. As further evidence of the export of goods, a supplier may have documentation from Customs (such as an export entry) indicating that the goods were exported, or documents from a foreign Customs authority indicating that the goods were imported to that country. However, the documents listed in paragraph 283 are sufficient evidence for the purposes of paragraph 38-185(3)(e).

Example 23 – sufficient documentary evidence to show that the goods have been exported

286. *As in example 19, Koala Valley Winery sells 30 cases of wine to a French customer, but delivers the wine to a consolidator engaged by the buyer. The consolidator provides a delivery receipt upon receiving the wine. When the wine is finally shipped, the consolidator receives a bill of lading and subsequently issues a house bill to the French customer showing that the goods were transported to France. The French customer forwards a copy of the house bill to the Winery. These documents, along with the commercial invoices showing Pierre as the buyer and evidencing payment from a foreign source, are sufficient to demonstrate that the goods were exported.*

287. Paragraph 38-185(3)(e) specifically requires that the supplier holds sufficient documentary evidence. At paragraphs 76 to 77 of the Ruling section, we explain when we expect that a supplier will obtain such evidence.

288. The requirements of subsection 38-185(3), in particular paragraph 38-185(3)(e), are likely to impact on the commercial arrangements between the supplier and the recipient as regards the supply of goods for export. For example, the sale transaction may be treated as GST-free because the recipient has undertaken to supply the required documentary evidence within a specified period of time. On the other hand, the sale transaction may be treated as taxable until the recipient provides the required information.

Example 24 – GST-free supply of goods for export but supplier recovers GST payable if goods are not exported

289. *As in example 19, Pierre purchases wine from Koala Valley Winery on FCA terms. The parties have been trading with each other for a long period of time on these terms. It is therefore clear that the wine Pierre purchases is being exported through his Australian freight consolidator. The parties negotiate the price on a GST-free basis, with an agreement that if Pierre does not export the goods and provide documentary evidence to the supplier before or within 60 days, Koala is entitled to increase the price payable by 10%. The commercial agreement means that the supplier can effectively recover the GST payable on the supply from the buyer.*

Example 25 – GST-free supply of goods for export but supplier recovers GST payable if goods are not exported

290. *As in example 18, Black Stump Coal sells 10,000 tonnes of coal under an Ex-works contract to a foreign buyer. Black Stump Coal has no further control of the goods after the buyer takes delivery of the coal at a mine in central Queensland. The Australian supplier is not the exporter and will not be sure that the coal is exported until the buyer provides sufficient documentary evidence. In light of this, and because Black Stump Coal does not know whether the foreign buyer is required to be registered, a clause is included in the contract to allow the supplier to effectively recover the GST payable on the supply from the buyer. The clause entitles the supplier to increase the price payable in the event that any of the elements in subsection 38-185(3) are not met within a specified period of time. If after the expiry of the 60 days, the buyer has not exported the goods or the supplier has been unable to obtain sufficient documentary evidence that the goods were exported, the supply is a taxable supply. Black Stump Coal has a GST liability and recovers the amount from the buyer.*

Adjustment events

291. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit, this gives rise to an adjustment event (refer paragraphs 216 to 220 above). When subsection 38-185(3) is being relied on to treat a supplier as having exported goods, the supply is a taxable supply until the requirements of the subsection are actually met. However, the Commissioner accepts that the supplier may initially treat the supply as GST-free if the contractual terms clearly require the recipient to export the goods.

292. If the requirements of subsection 38-185(3) are not met, the supply is a taxable supply. A supplier, who has already accounted for the supply as GST-free on the basis that the requirements of subsection 38-185(3) and item 1 or 2 are met needs to make an increasing adjustment.[61]

Example 26 – increasing adjustment

293. *As in example 23, an Australian supplier sells wine to Pierre on FCA terms with an agreement that if the requirements of subsection 38-185(3) are not met within 60 days, the seller can effectively recover the amount of GST payable. At the time of the supply, it is reasonable for the supplier to account for the supply as a GST-free supply. This is because the FCA terms clearly envisage that the recipient will appoint a carrier to transport the goods out of Australia. The supplier knows that Pierre is not registered. After the expiry of the 60 day period, Pierre has not exported the goods, and there has not been a request for the Commissioner to extend the period. An event has occurred (the expiry of the period) which has the effect of changing a GST-free supply to a taxable supply. The supply is a taxable supply, regardless of whether the supplier is successful in recovering the additional amount from the buyer, as per their commercial agreement. Also, the supply is a taxable supply, even if the parties had not included the contingency clause in their agreement. Koala has an increasing adjustment attributable to the tax period in which the 60 days expires.*

Example 27 – decreasing adjustment

294. *An Australian horse breeder sells a racehorse at an auction in Australia. In this case, the auctioneer announces that the bids are to be taken on a GST-inclusive basis as the sale of the horse is a taxable supply (the seller is registered for GST). The terms of the sale agreement do not require any party to export the horse. Both foreign*

[61] As the supply has changed from a GST-free supply to a taxable supply, this is an adjustment event under paragraph 19-10(1)(c).

and local bidders are at the auction. A New Zealand trainer (not registered for GST) buys the horse with the highest bid. The supplier's tax period ends and the supplier lodges a BAS remitting 1/11th of the price as GST on the taxable supply of the horse. If, before the end of the 60 day period, the recipient exports the horse and provides sufficient documentary evidence to the Australian seller, the supply becomes a GST-free supply (provided the other requirements of subsection 38-185(3) are satisfied). The supplier can then make a decreasing adjustment in the tax period in which the supplier becomes aware of the adjustment. The supplier becomes aware of the adjustment when the supplier receives sufficient documentary evidence that the horse has been exported.

Documentary evidence

295. Suppliers are required to keep records that record and explain the transactions they engage in. The Explanatory Memorandum to section 38-185 states 'You must keep appropriate records to verify the export and when it happened.'[62] Section 70 of the TAA 1953 provides (in part):

> **Keeping records of indirect tax transactions**
>
> (1) If you:
>
> (a) make a taxable supply, taxable importation, creditable acquisition or creditable importation; or
>
> (aa) make a supply that is GST-free or input taxed; or …
>
> you must:
>
> (d) keep records that record and explain all transactions and other acts you engage in that are relevant to that supply…; and
>
> (e) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.

296. Records will 'explain' a GST-free transaction made under section 38-185 if they contain enough information for an ATO officer with accounting skills and knowledge of export procedures to understand the essential features of the transaction.

297. For a supply that may be GST-free under section 38-185, the onus is on a supplier to be satisfied, given their specific knowledge of the supply, that goods have been exported. The supplier must have sufficient evidence to show that all of the requirements of the particular item have been met. For items 1 to 4, this includes records showing that goods were exported.

[62] Refer to the Explanatory Memorandum relating to the A New Tax System (Goods and Services Tax) Bill 1998 at paragraph 5.79.

298. The documents should also provide a reasonable basis for an independent party to be satisfied that the requirements of the item are met.

299. The types of records available to a supplier will vary depending on the circumstances of the supply. Table 1 of Appendix B lists the types of transport documentation a supplier may have depending on the mode of transport used to export the goods. Table 2 of Appendix B lists the types of commercial documentation and official documents that a supplier may have to explain the transaction. A combination of these documents will connect the supply of the goods with the export of those goods. The lists of documents described in the Appendices are not exhaustive, but merely offer guidance as to the types of documents available.

300. With a combination of the documents listed in Appendix B the supplier should be able to evidence the export of goods. Suppliers may have other evidence to support their knowledge that the goods were exported and that the other elements of the particular item were met. For example, for unique goods such as famous works of art, media attention and public information may evidence the export of the goods.

301. The following paragraphs provide a guide to the types of documents listed in the Tables of Appendix B and the information they normally contain which will demonstrate that the elements of the relevant item are satisfied.

Items 1 and 2

302. Under items 1 and 2, to demonstrate that a supply of goods is a GST-free export, the supplier must have documentary evidence to show that the goods supplied were exported and that the supplier exported them within the specified time.

303. In most cases, the documents a supplier obtains in the ordinary course of the transaction will be sufficient, provided normal commercial procedures are followed. These documents will usually consist of:

(a) the transport documents evidencing the carriage of the goods out of Australia;

(b) the commercial documents in relation to the supply that identify the supplier, the recipient, the goods and the payment arrangements. The commercial documents should clearly link to the transport documents; and

(c) Customs and other official documents.

Transport documents

304. Where goods are exported by direct engagement of a shipping line or airline, the supplier should retain the following documents depending on the mode of transport:

- Bill of Lading;
- Air waybill; or
- Sea waybill.

305. Where the supplier engages a freight forwarder, consolidator, international express courier or postal agency, at least one of the following documents should be retained by the supplier depending on the mode of transport:

- House bill;
- House sea or air waybill;
- Certificate of shipment;
- Consignment note;
- Postal certificate; or
- Proof of Delivery document.

306. The relevant transport document should contain a description of the goods, details of the sender, the destination and the date of issue.

Commercial documents

307. Transport documents should be supported by commercial records such as:

- purchase orders;
- contracts;
- invoices;
- receipts;
- bank statements;
- packing lists and delivery dockets; and
- freight and insurance invoices where applicable.

308. These documents should link the details of the supply of goods, with the details of their carriage out of Australia. These documents must clearly identify the:

- supplier;
- recipient;

- goods; and
- price of the goods.

Vague descriptions of goods, quantities or values are not acceptable. For instance, 'various whitegoods' is not acceptable when the correct description is: '10 washing machines model no. WM 100 and 15 refrigerators model no. R 400'.

Customs and other official evidence

309. A supplier may obtain Customs and other official evidence such as the entry for export, or documentation from the foreign Customs authority evidencing the importation or arrival of the goods.

310. At paragraph 44 of the Ruling section, we illustrate a case where the Commissioner considers that the documentary evidence is sufficient for an independent party to conclude that the goods were exported.

311. In addition to the requirements set out in item 1, under item 2 a supplier requires evidence to show that the supply was made under a contract that requires the goods to be exported, and that the consideration is or was provided in instalments.

312. Documents providing evidence of this include sales contracts, quotations, purchase orders and invoices.

Items 3 and 4

313. To demonstrate that a supply of an aircraft or ship is a GST-free export under item 3 and 4, a supplier needs documentary evidence to show that the recipient exported the ship or aircraft. In most cases, the supplier will obtain this evidence from the recipient after departure, or immediately before departure.

314. Evidence of the departure of a ship or aircraft from Australia is the final certificate of clearance issued by Customs. Provided there is no information to the contrary, this is sufficient evidence.

315. A supplier who does not have a copy of the final certificate of clearance will need a combination of other evidence, which, as a whole, provides a reasonable basis for the conclusion that the ship or aircraft was exported. A supplier may have documents such as the entry for export, documents issued by the foreign customs authority evidencing arrival of the ship or aircraft, evidence of foreign registration of the ship or aircraft and commercial evidence as outlined under items 1 and 2 (see paragraphs 307 to 308).

316. In addition to the evidence required under item 3, a supplier, to demonstrate that a supply of an aircraft or ship is a GST-free export under item 4, needs evidence that the supply was made under a

contract that requires the goods to be exported, and that the consideration is or was provided in instalments.

317. Such evidence is the same as described under item 2.

Detailed contents list

318. Below is a detailed content list for this draft Ruling:

Commissioner of Taxation
18 December 2002

Previous draft:

Previously released as part of GSTR 2001/D6.

Related Rulings/Determinations:

GSTR 2000/19; GSTR 1999/1

Subject references:

- aircraft
- air express courier
- air waybill
- Australia
- bill of lading
- chain sales
- connected with Australia
- consolidator
- cost insurance and freight (CIF)
- deliver
- documentary evidence
- documentation
- evidence of export
- export
- exported
- export entry
- export of goods
- exporter
- external territories
- free carrier (FCA)
- free on board (FOB)
- freight forwarder
- goods
- GST-free
- house bill
- imports
- imported
- instalments
- installations
- international
- international transport provider
- made available in Australia
- overseas destination
- postal agency
- physical possession
- recipient
- recipient exports them
- record keeping
- registered
- required to be registered
- sea waybill
- ship
- 60 day period
- specified time period
- supplied
- supplier
- supplier exports them
- timing requirement
- under its own power
- taxable supply
- trustee companies
- trustee individuals

Legislative references:

- AI 1901 15B(1)(b)
- AI 1901 15B(4)
- AI 1901 36
- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-25(1)
- ANTS(GST)A 1999 9-25(2)
- ANTS(GST)A 1999 9-10(1)
- ANTS(GST)A 1999 19-10(1)(c)
- ANTS(GST)A 1999 23-5
- ANTS(GST)A 1999 23-15
- ANTS(GST)A 1999 29-20(1)
- ANTS(GST)A 1999 38-185
- ANTS(GST)A 1999 38-185(1)
- ANTS(GST)A 1999 38-185(1) item 1
- ANTS(GST)A 1999 38-185(1) item 2
- ANTS(GST)A 1999 38-185(1) item 3
- ANTS(GST)A 1999 38-185(1) item 4
- ANTS(GST)A 1999 38-185(2)
- ANTS(GST)A 1999 38-185(3)
- ANTS(GST)A 1999 38-185(3)(a)
- ANTS(GST)A 1999 38-185(3)(b)
- ANTS(GST)A 1999 38-185(3)(c)
- ANTS(GST)A 1999 38-185(3)(d)
- ANTS(GST)A 1999 38-185(3)(e)
- ANTS(GST)A 1999 38-190
- ANTS(GST)A 1999 195-1
- Customs A 1901 5C
- Customs A 1901 113
- Customs A 1901 114(6)
- Customs A 1901 119D(3)
- Customs R 1926 99
- Export Market Development Grants A 1974
- Land and Income Tax A (NZ) 1954 129B
- Seas & Submerged Lands A 1973 7
- TAA 1953 37
- TAA 1953 70

Case references:

- Australian Trade Commission v. Goodman Fielder Industries Ltd (1992) 36 FCR 517
- Camelo v. Britten (1820), 4B and Ald. 184; 106 ER 906
- Companhia Votorantim de Cellulose e Papel v. Anti-Dumping Authority and Others 42 ALD 7 at 14
- Companhia Votorantim de Cellulose e Papel v. Anti-Dumping Authority and Others (1996) 71 FCR 80; (1996) 141 ALR 297
- FC of T v. Chaudhri (2001) 2001 ATC 4214 at 4216; (2001) 47 ATR 126
- Henty v. Bainbridge Hawker (1963) 36 ALJR 354
- Inland Revenue Commissioner (NZ) v. International Importing Ltd [1972] NZLR 1095; (1972) 72 ATC 6033; (1972) 3 ATR 173

- The Commonwealth v. Sterling Nicholas Duty Free Pty Limited (1972) 126 CLR 297
- Wesley-Smith v. Balzary (1976-77) 14 ALR 681

ATO references:
NO T2001/09845; T2001/014150
ISSN: 1443-5160

APPENDIX A

Section 5C of the Customs Act 1901

Part II Administration

5C Certain installations to be part of Australia

(1) For the purposes of the Customs Acts:

(a) a resources installation that becomes attached to, or that is, at the commencement of this subsection, attached to, the Australian seabed; or

(b) a sea installation that becomes installed in, or that is, at the commencement of this subsection, installed in, an adjacent area or a coastal area;

shall, subject to subsections (2) and (3), be deemed to be part of Australia.

(2) A resources installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Customs Acts, cease to be part of Australia if:

(a) the installation is detached from the Australian seabed, or from another resources installation attached to the Australian seabed, for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits); or

(b) after having been detached from the Australian seabed otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits).

(3) A sea installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Customs Acts, cease to be part of Australia if:

(a) the installation is detached from its location for the purpose of being taken to a place that is not in an adjacent area or in a coastal area; or

(b) after having been detached from its location otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place that is not in an adjacent area or in a coastal area.

APPENDIX B

SUFFICIENT DOCUMENTARY EVIDENCE

Introduction

An exporter must have sufficient documentary evidence to explain the transaction and to show that the goods were exported.

(i) **Table 1** lists the types of transport documentation that a supplier may have depending on the mode of transport used to export the goods.

(ii) **Table 2** lists the type of commercial documentation and official documents that a supplier may have to explain the transaction.

The lists in Tables 1 and 2 are not exhaustive but merely demonstrate the types of documentation available to explain the transaction and to show that goods have been exported.

Words appearing in the tables in **bold** type, indicate factors of particular importance.

Table 1

TRANSPORT DOCUMENTS

Document Type		**Information**	**Evidences…**
Primary Transport Documents	Bill of lading Sea waybill Air waybill	• Sender's name • Receiver's name • Destination of goods • Description of goods • Marks and Numbers (packaging identification) • Date loaded • Place loaded • Terms of trade (Incoterms) • Name of ship and voyage number/ aircraft flight number	• **Who is the exporter** • **The goods were exported** • There was a supply of goods • Same goods supplied were exported • 60 day rule
Secondary Transport Documents	House bill (air or sea)	• Sender's name • Receiver's name • Destination of goods • Description of goods • Marks and Numbers (packaging identification) • Date loaded • Place loaded • Name of ship and voyage number/ aircraft flight number	• **Who is the exporter** • **The goods were exported** • There was a supply of goods • Same goods supplied were exported • 60 day rule
	Certificate of shipment	• Sender's name • Receiver's name • Destination of goods • Description of goods • Date received by freight forwarder/consolidator	• **Who is the exporter** • **The goods were exported** • There was a supply goods • 60 day rule
	Consignment note Postal Certificate	• Sender's name • Receiver's name • Destination of goods • Description of goods • Date received by courier/post office	• **Who is the exporter** • **The goods were exported** • There was a supply of goods • 60 day rule

TRANSPORT DOCUMENTS
(continued)

Document Type		Information	Evidences…
Other Evidence of Transport	Proof of Delivery (POD)	• Sender's name • Receiver's name • Place of delivery overseas • Description of goods • Date delivered at destination	• **Who is the exporter** • The goods were exported • There was a supply of goods • **The goods were exported**

Table 2

COMMERCIAL TRANSACTION DOCUMENTS AND OFFICIAL DOCUMENTS

Document Type		Information	Evidences…
Commercial Transaction Documents prepared by buyer/ recipient or seller	• Purchase order • Invoice • Sales Contract • Evidence of payment (receipts/bank statements) • Packing list • Delivery docket • Letter of engagement to international transport provider • Declaration requirement to be registered	• Supplier's name and address • Purchaser's name and address • Place of delivery • Price • Description and quantity of goods • Marks and Numbers (packaging identification) • Terms of trade and payment arrangements • Invoice date • Date of payment • Declares whether recipient is required to be registered	• **Who is the exporter** • Contract requires goods to be exported • There was a supply of goods • Same goods supplied were exported • Contract requires goods to be exported / consideration in instalments • 60 day rule • 60 day rule and supply • Registration status of recipient
Other Commercial Transaction Documents prepared by third parties	• Domestic carriage invoice • International freight and insurance invoices • Invoices for loading and handling charges	• Place of local delivery • Description and quantity of goods • Marks and Numbers (packaging identification) • Place of delivery overseas • Date	• Commencement of export • There was a supply of goods • Same goods supplied were exported • Goods exported • 60 day rule

COMMERCIAL TRANSACTION DOCUMENTS AND OFFICIAL DOCUMENTS

(continued)

Document Type		**Information**	**Evidences…**
Official Documents issued by Government bodies	• Export entry • Export permit • Customs certificate of clearance • Overseas Customs import documents	• Export Clearance Number (ECN) • Destination • Description of goods • Name of vessel • Date of departure • Place of delivery • Date delivery • Description of goods	• **Goods were exported** • Same goods supplied were exported • Departure from final port (exports of ships and aircraft) • Goods exported and 60 day rule

APPENDIX C

‘TERMS OF TRADE’ OR ‘INCOTERMS’

Introduction

(i) Terms of trade or ‘Incoterms’ are a set of uniform rules codifying the interpretation of trade terms used in international trade. Incoterms are drafted by the International Chamber of Commerce and on 1 January 2000 a new set of rules were published as Incoterms 2000. A brief summary of each term is provided in the table below.

(ii) The Incoterms only deal with the relation between sellers and buyers under the contract of sale. The scope of the Incoterms is limited to matters relating to the rights and obligations of the seller and buyer with respect to delivery of goods sold. The terms ‘are designed to arrange for the transfer of risk from Seller to Buyer at an unambiguous convenient place where goods can be inspected.’[63] Incoterms do not cover, amongst other matters, transfer of ownership – that is, they do <u>not</u> relate to when or where title changes.

(iii) You will note that the seller’s obligations increase as we go down the table.

(iv) Note that the terms are divided into 4 categories.

- The *‘E’-term* is where the seller’s obligation is at its minimum. The seller usually places the goods at the buyer’s disposal at the seller’s own premises. In practice, the seller frequently assists the buyer to load the goods on the collecting vehicle.
- The *‘F’-terms* requires the seller to deliver goods for carriage as instructed by the buyer.
- The *‘C’-terms* requires the seller to contract for carriage. As with the “F”-terms, the seller fulfils the contract in the country of shipment or dispatch (i.e., contracts of sale are *departure or shipment contracts*). However, the division of costs (between seller and buyer) is fixed at a point in the country of destination.
- The ‘*D’-terms* is different in nature from the ‘C’-terms. The seller is responsible for the arrival of goods within the country of import (i.e., contracts are *arrival contracts*).

[63] The Merchants Guide P&O Nedlloyd December 1999 at page 14.

INCOTERMS 2000

EXW	**Ex works** The seller places the goods at the disposal of the buyer at the seller's premises.
FCA	**Free Carrier** The seller delivers the goods to the carrier nominated by the buyer. The seller also clears the goods for export.
FAS	**Free Alongside Ship** The seller places the goods alongside the vessel nominated by the buyer. The seller also clears the goods for export.
FOB	**Free On Board** The seller delivers the goods over the ship's rail at the port of shipment. The seller also clears the goods for export.
CFR	**Cost and Freight** The seller delivers goods over the ship's rail and pays costs and freight to bring the goods to the port of destination. The seller also clears the goods for export. However, the buyer is responsible for loss or damage to the goods.
CIF	**Cost Insurance and Freight** The seller delivers goods over the ship's rail and pays costs and freight to bring the goods to the port of destination. The seller also clears the goods for export and obtains marine insurance against the buyer's loss or damage to the goods during the carriage.
CPT	**Carriage Paid To** The seller delivers the goods to the carrier nominated by him and pays the cost of carriage to bring the goods to the named destination.
CIP	**Carriage and Insurance Paid To** The seller delivers the goods to the carrier nominated by himself, and pays the cost of carriage to bring the goods to the named destination, and procures insurance against the buyer's loss or damage to the goods during the carriage.
DAF	**Delivered at Frontier** The seller places the goods at the disposal of the buyer at a named frontier (e.g., country of export). The goods are not unloaded and are before the Customs border of the adjoining country. (This is used when there are land frontiers).

INCOTERMS 2000 (continued)

DES	**Delivered Ex Ship** The seller places the goods at the disposal of the buyer at a named port of destination. The goods are not unloaded. (This is used when the goods are delivered by sea or inland waterway).
DEQ	**Delivered Ex Quay** The seller places the goods at the disposal of the buyer on the quay (wharf) at a named port of destination. The goods are discharged on the quay (wharf). The buyer clears the goods for import.
DDU	**Delivered Duty Unpaid** The seller delivers the goods to a named place of destination. The goods are not unloaded. The buyer pays any duty (including taxes).
DDP	**Delivered Duty Paid** The seller delivers the goods to a named place of destination. The goods are not unloaded. The seller also pays any duty (including taxes).

References

Incoterms *2000*, The International Chamber of Commerce official rules for the interpretation of trade terms.