


***GSTR 2002/6A2 - Addendum - 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***

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## Addendum

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### 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*

This Addendum amends Goods and Services Tax Ruling GSTR 2002/6 to take account of amendments to the *A New Tax System (Goods and Services Tax) Act 1999* made by *Tax Laws Amendment (2009 GST Administration Measures) Act 2010 (20 of 2010)*.

Relevantly, this included amendments to:

- provide that a supply of goods without consideration to an associate is GST-free if the supplier exports the goods from Australia
- prevent goods being sold to Australian external territory residents as GST-free exports where the recipient has also claimed a refund of the GST under the tourist refund scheme.

#### **GSTR 2002/6 is amended as follows:**

##### **1. Preamble**

Omit the first paragraph and substitute:

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the Taxation Administration Act 1953 and former section 105-60 of Schedule 1 to the Taxation Administration Act 1953.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the Taxation Administration Act 1953.*

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

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

## 2. Paragraph 4

At the end of the paragraph, insert:

The Ruling also explains the operation of subsection 38-185(4) and how it expands the scope of item 2A. These provisions are also impacted where a resident of an Australian external territory exports goods under the tourist refund scheme.

## 3. Paragraph 11

Omit the note; substitute:

Note 1: The Addendum to this Ruling that issued on 15 August 2007, explains the Commissioner's view of the law as it applied from 1 July 2007. You can rely upon the Addendum on and from its date of issue.

Note 2: The Addendum to this Ruling that issued on 11 May 2011, explains the Commissioner's view of the law in relation to the export of goods that were acquired by residents of Australia's external territories on and from 1 July 2010. The Addendum to this Ruling also explains the Commissioner's view of the law in relation to the export of goods that were supplied to an associate on and from 24 March 2010. You can rely upon the Addendum on and from its date of issue.

Note 3: If these Addenda conflict with a previous private ruling that you have obtained or a previous public ruling, the relevant Addendum prevails. However, if you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of the Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of the Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

**4. Paragraph 15**

In the table, after Item 2 insert:

2A	Export of goods – supplies to associates without consideration	A supply of goods without consideration to an associate of the supplier, but only if the supplier exports them from Australia.
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**5. Paragraph 17**

Omit 'Items 1 and 2'; substitute 'Items 1, 2 and 2A'.

**6. Paragraph 51**

After paragraph 51, insert:

**Item 2A – Export of goods – supplies to associates without consideration**

51A. Under item 2A, a supply of goods to an associate without consideration is GST-free where the supplier exports them from Australia. The item requires that:

- there is an export of goods, and
- the supplier is the entity that exports the goods.

51B. The requirement that the supplier is the entity that exports the goods is satisfied where either:

- (a) paragraphs 23 to 28 of this Ruling are satisfied; or
- (b) the requirements of subsection 38-185(4) are met (see paragraph 83A of this Ruling).

**7. Paragraph 67**

(a) Omit 'and' from subparagraph 67(d).

(b) Omit subparagraph 67(e) and substitute:

- (e) the supplier has sufficient documentary evidence to show that the goods were exported (paragraph 38-185(3)(e)); and
- (f) if that entity is covered by paragraph 168-5(1A)(c) - the supplier has a declaration by that entity stating that:
  - (i) a payment has not been sought under section 168-5 for the supply (subparagraph 38-185(3)(f)(i)); and

- (ii) if the goods are wine (within the meaning of the *A New Tax System (Wine Equalisation Tax) Act 1999* ('Wine Equalisation Tax Act')) - a payment has not been sought under section 25-5 of that Act for the supply (subparagraph 38-185(3)(f)(ii) of the GST Act).<sup>15A</sup>

## 8. Paragraph 75

After paragraph 75, insert:

75A. If the entity that actually exports the goods is a resident of an Australian external territory, paragraph 38-185(3)(f) requires the supplier to also obtain and hold a declaration from the entity that a refund claim for GST and/or wine equalisation tax has not been made under the tourist refund scheme.

## 9. Paragraph 83

Omit the paragraph, substitute:

83. If the supplier is treated as having exported the goods under subsection 38-185(3) or 38-185(4), subsection 38-185(2) does not apply. However, subsections 38-185(3) and 38-185(4) provide 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.

### **Subsection 38-185(4) – supplier treated as exporter for the purposes of item 2A**

83A. Under subsection 38-185(4) a supplier who has not exported goods (as explained at paragraphs 22 to 28 of this Ruling), is treated as having exported them for the purposes of item 2A if the following conditions are met:

- (a) before the goods are exported, the supplier supplies them to an entity that:
  - (i) is an associate of the supplier (subparagraph 38-185(4)(a)(i)); and
  - (ii) is not registered or required to be registered (subparagraph 38-185(4)(a)(ii));

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<sup>15A</sup> The entity will be covered by paragraph 168-5(1A)(c) if the entity is an individual who resides in an Australian external territory.

- (b) that associate exports the goods from Australia within 60 days (or such further period that the Commissioner allows) after the earlier of the following:
  - (i) the day the goods were delivered in Australia to the associate (subparagraph 38-185(4)(b)(i)); and
  - (ii) the day the goods were made available in Australia to the associate (subparagraph 38-185(4)(b)(ii));
- (c) the goods have been entered for export within the meaning of section 113 of the Customs Act (paragraph 38-185(4)(c) of the GST Act);
- (d) since their supply to that associate, 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(4)(d));
- (e) the supplier has sufficient documentary evidence to show that the goods were exported (paragraph 38-185(4)(e)); and
- (f) if that entity is covered by paragraph 168-5(1A)(c) - the supplier has a declaration by that entity stating that:
  - (i) a payment has not been sought under section 168-5 for the supply (subparagraph 38-185(4)(f)(i)); and
  - (ii) if the goods are wine (within the meaning of the Wine Equalisation Tax Act - a payment has not been sought under section 25-5 of that Act for the supply (subparagraph 38-185(4)(f)(ii) of the GST Act).<sup>17A</sup>

## 10. Paragraph 220

After the paragraph; insert:

### **Item 2A – Export of goods – supplies to associates without consideration**

220A. Item 2A deals with the supply of goods without consideration to an associate of the supplier, where the supplier exports the goods.

<sup>17A</sup> The entity will be covered by paragraph 168-5(1A)(c) if the entity is an individual who resides in an Australian external territory.

220B. A supply of goods that are exported is GST-free where the elements of item 2A of the table in subsection 38-185(1) are satisfied. The elements are:

- (a) there is a supply of goods;<sup>55A</sup>
- (b) the supply is made without consideration to an associate<sup>55B</sup> of the supplier; and
- (c) the supplier exports the goods from Australia.<sup>55C</sup>

## 11. Paragraph 239

- (a) Omit 'five'; substitute 'six'.
- (b) Omit 'and' from subparagraph 239(d).
- (c) Omit subparagraph 239(e); substitute:
  - (e) the supplier has sufficient documentary evidence to show that the goods were exported; and
  - (f) if that entity is covered by paragraph 168-5(1A)(c) - the supplier has a declaration by that entity stating that:
    - (i) a payment has not been sought under section 168-5 for the supply; and
    - (ii) if the goods are wine (within the meaning of the Wine Equalisation Tax Act) - a payment has not been sought under section 25-5 of that Act for the supply.<sup>56A</sup>

## 12. Paragraph 240

Omit '290'; substitute '290B'.

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<sup>55A</sup> Paragraphs 90 to 91 of this Ruling discuss when there has been a supply of goods.

<sup>55B</sup> 'Associate' is defined in section 195-1 by reference to section 318 of the ITAA 1936.

<sup>55C</sup> Paragraphs 92 to 148 of this Ruling discuss when goods have been exported from Australia.

<sup>56A</sup> The entity will be covered by paragraph 168-5(1A)(c) if the entity is an individual who resides in an Australian external territory.

**13. Paragraph 290**

After paragraph 290, insert:

***Paragraph 38-185(3)(f) – entities covered by paragraph 168-5(1A)(c)***

290A. Where the entity is an individual who resides in an Australian external territory, a supplier is required to obtain a declaration from the entity stating that a refund claim has not been made under the tourist refund scheme. The purpose of the declaration is to ensure that the entity does not obtain a GST-free supply from suppliers and also make claims under the tourist refund scheme.

290B. The onus is on the supplier to obtain the declaration. The supplier must obtain the declaration at the time ‘sufficient documentary evidence of exportation’ is provided. If a supplier does not obtain and hold the declaration to show that a refund has not been claimed under the tourist refund scheme, the supplier cannot be treated as having exported them for the purposes of items 1 and 2. The supply is not GST-free.

**14. Paragraph 291**

Omit ‘38-185(3)’; substitute ‘38-185(3) or 38-185(4)’.

**15. Paragraph 292**

Omit the paragraph, substitute:

292. If the requirements of subsection 38-185(3) or 38-185(4) 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) or 38-185(4) and item 1, 2 or 2A are met, needs to make an increasing adjustment.<sup>61</sup>

**16. Paragraph 302**

(a) Omit the heading; substitute:

***Items 1, 2 and 2A***

(b) Omit ‘Under items 1 and 2’; substitute ‘Under items 1, 2 and 2A’.

<sup>61</sup> 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).



# GSTR 2002/6

## 17. Detailed Content List

(a)	Omit:	
	<i>Items 1 and 2</i>	302
(b)	Insert:	
	Item 2A– Export of goods – supplies to associates without consideration	51A
	Subsection 38-185(4) – supplier treated as exporter for the purposes of item 2A	83A
	Item 2A – Export of goods – supplies to associates without consideration	220A
	<i>Paragraph 38-185(3)(f) – entities covered by paragraph 168-5(1A)(c)</i>	290A
	<i>Items 1, 2 and 2A</i>	302

## 18. Subject references:

Insert:

- associate
- Australian external territories
- GST tourist refund scheme
- wine equalisation tax

## 19. Legislative references:

- |     |  |
|-----|--|
| (a) | Omit:  |
|     | <ul style="list-style-type: none"> <li>- ANTS(GST)A 1999 38-185(1) item 1</li> <li>- ANTS(GST)A 1999 38-185(1) item 2</li> <li>- ANTS(GST)A 1999 38-185(1) item 3</li> <li>- ANTS(GST)A 1999 38-185(1) item 4</li> </ul>   |
| (b) | Insert:  |
|     | <ul style="list-style-type: none"> <li>- ANTS(GST)A 1999 38-185(3)(f)</li> <li>- ANTS(GST)A 1999 38-185(3)(f)(i)</li> <li>- ANTS(GST)A 1999 38-185(3)(f)(ii)</li> <li>- ANTS(GST)A 1999 38-185(4)</li> <li>- ANTS(GST)A 1999 38-185(4)(a)</li> <li>- ANTS(GST)A 1999 38-185(4)(a)(i)</li> <li>- ANTS(GST)A 1999 38-185(4)(a)(ii)</li> <li>- ANTS(GST)A 1999 38-185(4)(b)</li> <li>- ANTS(GST)A 1999 38-185(4)(b)(i)</li> <li>- ANTS(GST)A 1999 38-185(4)(b)(ii)</li> <li>- ANTS(GST)A 1999 38-185(4)(c)</li> <li>- ANTS(GST)A 1999 38-185(4)(d)</li> <li>- ANTS(GST)A 1999 38-185(4)(e)</li> <li>- ANTS(GST)A 1999 38-185(4)(f)</li> <li>- ANTS(GST)A 1999 38-185(4)(f)(i)</li> <li>- ANTS(GST)A 1999 38-185(4)(f)(ii)</li> <li>- ANTS(GST)A 1999 168-5</li> </ul> |

- ANTS(GST)A 1999 168-5(1A)(c)
- ANTS(WET)A 1999 25-5

This Addendum applies in two parts:

- (i) firstly, on and from 24 March 2010 for supplies made to an associate; and
- (ii) secondly, on and from 1 July 2010 to the export of goods acquired by residents of Australian external territories.

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**Commissioner of Taxation**

11 May 2011

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ATO references

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