GSTR 2005/2 - Goods and services tax: supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia

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 The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts.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

This Ruling is being reviewed to incorporate the amendments made by *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*. The changes impact how GST applies to cross-border supplies. Schedule 1 of this Act (about business to consumers supplies) applies from 1 July 2017 and Schedule 2 (generally about business to business supplies) applies from 1 October 2016. For more information see ato.gov.au/AusGST.

This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*

Goods and Services Tax Ruling

Goods and services tax: supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia

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Preamble

*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.

*[**Note:** This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Ruling is about

1. This Ruling is about the operation of item 6 in the table in subsection 38-185(1) and item 5 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*

(GST Act). It explains the requirements for a supply to be GST-free under these items.

2. Item 6 provides for the GST-free supply of goods in the course of such repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia. Item 5 provides for the GST-free supply of services constituting the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia.

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

(a) when a supply of goods is in the course of repairing renovating, modifying or treating other goods;

(b) when a supply of services is constituted by the repair, renovation, modification or treatment of other goods;

(c) when goods are from outside Australia and have a destination outside Australia; and

(d) the types of documents which demonstrate that the requirements for a GST-free supply of goods or services are met.

4. All legislative references in this Ruling are to the GST Act, unless otherwise stated.

Date of effect

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

6. [Omitted.]

Context

7. A supply of goods is a taxable supply if the supply is connected with Australia and the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free.

8. Subdivision 38-E provides for GST-free supplies of exports and other supplies for consumption outside Australia.

9. Goods that are exported can be supplied GST-free if the requirements of one of the items in the table in subsection 38-185(1) are met. Supplies of things, other than goods or real property, for consumption outside Australia are GST-free if the specific

requirements of one of the items in the table in subsection 38-190(1) are met.

10. A supply of goods is GST-free under item 6 in subsection 38-185(1) if all the requirements of the item are satisfied unless the supplier reimports the goods according to subsection 38-185(2). A supply of services is GST-free if all the requirements of item 5 in the table in subsection 38-190(1) are satisfied unless the supply is a right or option to acquire something the supply of which would not be GST-free as it be connected with Australia according to subsection 38-190(2). It follows that if item 6 is satisfied, any services that are supplied at the same time by the same supplier will satisfy item 5.

11. This Ruling focuses on item 6 of subsection 38-185(1), but, unless otherwise stated, applies equally to item 5 of subsection 38-190(1).

Ruling with explanation

12. Section 9-5 provides that a supply is not a taxable supply to the extent that it is GST-free or input taxed. Subdivision 38-E provides for GST-free supplies in the context of goods for export and other supplies for consumption outside Australia.

13. Section 38-185 sets out a range of situations in which goods for export can be supplied GST-free. Section 38-190 sets out the circumstances in which things, other than goods or real property, for consumption outside Australia can be supplied GST-free.

14. 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).

15. Relevant to this Ruling, item 6 of the table in subsection 38-185(1) is as follows:

Export of goods used to repair etc imported goods	a supply of goods in the course of repairing, renovating, modifying or treating other goods from outside Australia whose destination is outside Australia, but only if: (a) the goods are attached to, or become part of, the other goods; or (b) the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the other goods.

16. However, the supply in item 6 will not be GST-free if the supplier of the goods used in the repair, renovation, modification or treatment[1] reimports the goods into Australia.[2]

17. For a supply of anything other than goods or real property to be GST-free under section 38-190, one of the five items listed in the table in subsection 38-190(1) must apply.

18. Relevant to this Ruling, item 5 of the table in subsection 38-190(1) is as follows:

Export of services used to repair etc imported goods	a supply that is constituted by the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia.

19. However, the supply in item 5 will not be GST-free if it is the supply of a right or option to acquire something the supply of which would be connected with Australia and would not be GST-free.[3]

The requirements of item 6 of subsection 38-185(1)

20. A supply of goods is GST-free if the requirements of item 6 in the table in subsection 38-185(1) are satisfied. The requirements of item 6 are:

(a) there is a supply of goods;

(b) the supply is in the course of repairing, renovating, modifying or treating of the other goods;

(c) the other goods are goods from outside Australia whose destination is outside Australia;[4] and

(d) the goods supplied are attached to or become part of the other goods or become unusable or worthless as a direct result of being used to repair the other goods.

Supply of goods

21. A supply of goods is a supply of any form of tangible personal property.[5]

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[1] Hereinafter, the terms 'repair, renovation, modification or treatment' are collectively referred to as 'repairs' or 'repairing' as the context requires.
[2] Subsection 38-185(2) of the GST Act
[3] Subsection 39-190(2) of the GST Act.
[4] For the purposes of this Ruling, and unless otherwise stated, 'other goods' refers to 'other goods from outside Australia whose destination is outside Australia.'
[5] Section 195-1 of the GST Act.

Example 1 – supply of goods and services in repairing other goods

22. *An overseas customer sends an Australian made clock back to the manufacturer for repair. The clock is to be returned to the overseas customer after the repair. The repairer replaces a damaged component and sends the clock back to the customer with an invoice itemising the charges for parts and labour. The supply is GST-free, regardless of whether:*

- *the parts are ancillary to the supply of repairs;*
- *the labour is ancillary to the supply of parts; or*
- *the supply is properly apportionable into two supplies that are respectively GST-free under item 6 in subsection 38-185(1) and item 5 in subsection 38-190(1).*

'In the course of'

23. For a supply of goods to be 'in the course of' repairing, other goods, it must be made by a person who is carrying out a repair of the other goods.

24. The present tense of the words 'repairing, renovating, modifying or treating' in item 6 requires the supply to be made as the process is being carried out. It follows that the supplier must be carrying out the process, although it is not a requirement that the supplier charge a separate fee for the process.

25. A supplier is the entity that carries out the repair, if it physically does so itself (or through its employees), or if it engages a subcontractor to undertake the process for it. In the case where a subcontractor is engaged, both the head contractor's and the subcontractor's supply is in the course of repairing other goods.

26. A supply of goods is not 'in the course of' repairing other goods if the supplier of the goods is not carrying out (or contractually responsible to arrange the carrying out of) a physical process in respect of the other goods. For example, a supply of a part to the owner of the other goods is not a supply of goods in the course of repairing the other goods if the owner will use the part to repair the other goods.

27. A supply of goods earlier in the distribution chain is not in the course of the repair, if the earlier supplier does not also carry out the process. For example, a supply of electrical components by an electronics retail store, to a technician for re-supply in repairing other goods, is not GST-free under item 6. The supply by the retailer is not in the course of repairing the other goods. The supply by the technician (if the technician re-supplies the goods) is in the course of repairing other goods.

Example 2 – goods supplied in the course of repairing other goods

28. *An overseas customer sends Australian manufactured equipment back to the manufacturer for repair. The Australian manufacturer supplies and installs a replacement component needed to repair the equipment. The customer is charged for the component and the labour. The equipment is returned to the customer overseas.*

29. *The supply of the component is made in the course of repairing the equipment and therefore is GST-free.*

Example 3 – supplies through a subcontractor

30. *As in Example 2, an overseas customer sends Australian manufactured equipment back to the manufacturer for repair. The Australian manufacturer subcontracts the repair to a subcontractor. A component is needed to repair which the subcontractor acquires from another supplier. After the repair is completed the equipment is returned overseas.*

31. *The supply of the component to the subcontractor is not made in the course of repairing the equipment and is therefore not GST-free. The subcontractor's supply of labour and the component to the Australian manufacturer is made in the course of the repair and is GST-free. The manufacturer's supply to the overseas customer is also GST-free*.

Example 4 – goods not supplied in the course of repairing other goods

32. *An overseas company sends faulty equipment to its Australian branch to be repaired. Employees of the company at the Australian branch carry out the repair using parts acquired from a local supplier. The supply of the parts is not made in the course of repairing the equipment and is therefore not GST-free.*

The meaning of 'repairing, renovating, modifying or treating'

33. Both items 5 and 6 discussed in this Ruling require there to be a repair, renovation, modification or treatment. The terms 'repair', 'renovation', 'modification' and 'treatment', and their derivatives, are not defined in the GST Act and therefore take their ordinary meaning.

34. The ordinary meaning of 'repair' is 'to restore to a good or sound condition after decay or damage; mend'.[6] Repairing includes replacing defective or worn parts or re-attaching parts that have become detached.

[6] *The Macquarie Dictionary* 2001, revised 3rd edn, The Macquarie Library Pty Ltd, NSW.

35. The ordinary meaning of 'renovate' is 'to make new or as if new again; restore to good condition; repair'.[7] Renovation changes the character or enhances efficiency of function, while a repair merely restores the character or efficiency of function.[8]

36. The ordinary meaning of 'modify' is 'to change somewhat the form or qualities of; alter somewhat'.[9]

37. The ordinary meaning of 'treat' is 'to subject to some agent or action in order to bring about a particular result, for example, to treat a substance with an acid'.[10] Processes such as cleaning, sterilising, waterproofing or rust proofing goods are examples of treating goods.

38. The use of the word 'whose' in the items 5 and 6, where the legislation refers to 'goods from outside Australia *whose* destination is outside Australia' [emphasis added], indicates that the goods departing Australia should be essentially the same goods as the goods that are brought into Australia. In the Commissioner's view, this excludes the process of manufacture from the provision.

39. The ordinary meaning of manufacture is 'the making of goods or wares by manual labour or machinery, especially on a large scale; the making of anything'.[11]

40. Manufacture commonly results in a change in the identity of goods. Their essential character is altered in such a way that they can no longer be considered to be the same goods. The original goods being components, ingredients, raw materials or similar, are subsumed into new goods with their own identity.

41. It follows that a process which may appear to be, for example, a treatment, or renovation, is not covered by the items 5 and 6 if the process amounts to the manufacture of new goods. In this context, the terms 'treating' and 'renovating' are limited to processes of the same kind or nature as repairing and modifying, neither of which contemplates the creation of completely new or different goods.

42. In Subdivision 38-E, repair, renovation, modification or treatment is a process applied to existing goods which may involve some change in the nature, form or condition of the existing goods, the substance of which remains unchanged. That is, the essential or fundamental character of the goods is the same. The other goods retain their own identity.

43. If item 5 in subsection 38-190(1) and item 6 in subsection 38-185(1) do not apply because new goods are created, the requirements of another item may be met. For example, a supplier contracted to manufacture new goods using components provided by the recipient, may make a supply of goods to the recipient. This supply is GST-free if the supplier exports the goods and the other requirements of item 1 in subsection 38-185(1) are met. Alternatively, a supply of

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[7] *The Macquarie Dictionary* 2001, revised 3rd edn, The Macquarie Library Pty Ltd, NSW.
[8] See generally Taxation Ruling TR 97/23 Income tax: deductions for repairs.
[9] *The Macquarie Dictionary* 2001, revised 3rd edn, The Macquarie Library Pty Ltd, NSW.
[10] *The Macquarie Dictionary* 2001, revised 3rd edn, The Macquarie Library Pty Ltd, NSW.
[11] *The Macquarie Dictionary* 2001, revised 3rd edn, The Macquarie Library Pty Ltd, NSW.

services made to a non-resident who is not registered or required to be registered, may be GST-free if the requirements of item 2 in subsection 38-190(1) are met.[12]

Example 5 – other goods different to goods that are exported

44. *A foreign chemical company sends chemicals in a powder form to an Australian resident pharmaceutical manufacturer. The Australian company uses the chemical powder along with other locally produced active ingredients, additives and bonding agents to produce a headache medication in a tablet form. The tablets are sent in bulk to the foreign company which is then charged for the processing service.*

45. *The powder has been subsumed into new or different goods (the tablets). The processing that the chemical undergoes is more complex than mere 'treatment' or 'treating' in the context in which those expressions are used in items 5 and 6, as it changes the fundamental nature of the goods, causing them to lose their identity. The headache tablets sent from Australia are different goods to the chemical powders imported.*

46. *Item 5 in subsection 38-190(1) does not apply to the supply of the processing services. Item 6 in subsection 38-185(1) also does not apply to the supply of goods (other active ingredients, additives and bonding agents) in the course of transforming the powder to headache tablets. However, depending on the circumstances of the arrangement, the supply of headache tablets may be a GST-free supply of goods under item 1 in subsection 38-185(1) or Subdivision 38-B.*

47. *Alternatively, if there is no supply of goods, item 2 in subsection 38-190(1) may apply if the non-resident recipient acquires the processing services in the course of an enterprise, and is not registered or required to be registered.*

Alternative view

48. There is an alternative view that, even if the goods from outside Australia are subsumed into new or different goods that have been produced as a result of a 'treatment', items 5 and 6 apply. It is of no consequence that the other goods have changed their essential or fundamental character. Under this alternative view, item 6 in subsection 38-185(1) or item 5 in subsection 38-190(1) would apply in Example 5. The Commissioner considers that the better view is as expressed in paragraphs 37 to 43.

[12] Assuming subsection 38-190(2) does not apply to deny GST-free status to the supply.

Other goods from outside Australia whose destination is outside Australia

49. For item 5 in subsection 38-190(1) and item 6 in subsection 38-185(1) to apply, the goods that are being repaired must be from outside Australia and have a destination outside Australia.

Meaning of 'Australia'

50. 'Australia' is defined in section 195-1 as follows:

> **Australia** does not include any external Territory. However, it includes an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia.

51. Australia therefore includes the entire land territory of Australia, coastal areas and seabed, but not any external Territories, such as Norfolk Island, Christmas Island or the Australian Antarctic Territory. Under section 5C of the *Customs Act 1901*, Australia also includes sea installations and resources installations (such as oil or gas rigs) that are attached to the seabed within the territorial boundaries of Australia,[13] or to an adjacent or coastal area as defined in that Act.

From outside Australia

52. For the purposes of item 6, goods are from outside Australia if they arrive in Australia from a place outside Australia. This includes ships or aircraft and goods on board the ships or aircraft.

53. Customs documents may evidence the arrival of goods from a place outside Australia. Customs laws require most arriving goods to be entered, or otherwise reported to Customs. For example, a foreign ship's cargo unloaded in Australia will be entered for home consumption, warehousing or transhipment, whereas the ship itself will be reported on an arrival report, and granted authority to enter port.

54. If no Customs documents exist, other evidence may demonstrate that goods are from outside Australia. See further, paragraphs 74 to 92 on documentary evidence.

Whose destination is outside Australia

55. The use of the phrase 'whose destination is outside Australia', when directly following the initial phrase that identifies the goods as 'goods from outside Australia', implies that the duration of the stay of the goods in Australia is temporary or transitory. There is a temporal link or nexus between the goods arriving in Australia and the goods

[13] The territorial limit of the coastal seas surrounding Australia is 12 nautical miles from the territorial sea baseline of Australian land masses. This was established in November 1990, by proclamation under section 7 of the *Seas and Submerged Lands Act 1973*.

departing Australia if on arrival in Australia, the goods have a destination outside Australia.

56. Goods (normally aircraft or ships) that pass through Australia in transit to another country have a destination outside Australia. For example, a ship will be reported on an arrival report, and granted authority to enter port. It is in transit.

57. Goods may be brought into Australia temporarily without the payment of duty or taxes. Clearance can be by way of what is colloquially known as a 'cruising permit',[14] or by providing a security for temporary importation.[15] Another means of temporary importation is under the cover of a 'carnet'.[16]

58. At the time the goods are being repaired, it must be intended that the goods will have a destination outside Australia. It is the Commissioner's view that the items require the supplier to determine whether the goods have a destination outside Australia when the supply is made. A Customs cruising permit or other Customs documentation provides evidence that the goods are from outside Australia with a destination outside Australia.

59. If there is a genuine intention when the supply is made, supported by documentary evidence, that the goods are destined for a place outside Australia, but the intention later changes such that the goods do not depart Australia, the requirement that the goods had a destination outside Australia is met. That is, the item requires the intended destination to be a place outside Australia. However, the absence of actual departure of the goods may be evidence that the intended destination was not outside Australia.

60. If goods do not depart Australia, or the supplier cannot show that they have departed, other evidence will be required to demonstrate that the goods were intended for a destination outside Australia. Other evidence which may indicate this could include Customs evidence of temporary importation, written contracts for repair and transportation into and out of Australia, and evidence of foreign ownership or registration of the goods.

Example 6 – goods from outside Australia whose destination is outside Australia

61. *An aircraft arrives in Australia. On arrival it is discovered that the aircraft has a mechanical problem. The problem is repaired and the aircraft continues on its international route. The aircraft's stay in Australia is transitory. At the time of the repair, the aircraft has the character of goods from outside Australia whose destination is outside Australia. The use of the aircraft in flying in Australia forms part of that journey. The supply of the repair is GST-free.*

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[14] Section 58 of the *Customs Act 1901.*
[15] Sections 162 or 162A of the *Customs Act 1901* and Regulations 124, 125, 125A and 125B of the *Customs Regulations 1926*.
[16] 'Carnet' is an international 'passport for goods'.

Example 7 – yacht used in Australia under 'Cruising Permit'

62. *Angelo, a European travelling yachtsman, arrives in Sydney from New Zealand en route to Europe. Angelo intends to visit various locations in Australia for recreation purposes, and is granted a Customs cruising permit to do so.*

63. *Before continuing his travel, Angelo contracts with Bruce's Yacht Repairs to have repairs made to his yacht. Angelo presents the Customs cruising permit to Bruce's Yacht Repairs as evidence that the yacht is in transit from New Zealand to Europe. The repairs are completed within the time period approved in the cruising permit. Provided that there is no information to the contrary, a copy of the cruising permit is sufficient evidence for the supplier to determine that the yacht is from outside Australia with a destination outside Australia.*

64. *The supply of repairs is in respect of goods from outside Australia whose destination is outside Australia and is GST-free.*

Example 8 – goods that are not from outside Australia

65. *An Australian businessman is about to embark on an overseas business trip. Prior to departure, he engages a computer store to repair and upgrade his laptop computer, which was purchased from the store a few weeks earlier. The computer was originally manufactured in Japan and imported by the store for resale in Australia. The supply of the repair and upgrade is not GST-free under item 5 in subsection 38-190(1) or item 6 of subsection 38-185(1). This is because, at the time of the repair, the computer did not have the character of goods from outside Australia whose destination is outside Australia. There is no temporal nexus between the arrival of the goods in Australia, their repair and the removal of the goods from Australia.*

The goods supplied are attached to or consumed

66. This requirement is met if the goods supplied are attached to or become part of the other goods or if the goods supplied become unusable or worthless as a result of the repair, renovation, modification or treatment. Some consumable goods, such as oils or adhesives, are incorporated into the other goods, as are spare parts or new components.

67. For goods to be attached they must be affixed with a significant degree of permanency. Goods become part of other goods when they are incorporated into the other goods.

68. Goods that become unusable or worthless as a result of the repair include things such as cleaning agents, solvents or chemical catalysts.[17]

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[17] This is consistent with the example at paragraph 5.83 of the Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998.

69. Consistent with the requirement of item 6, that the goods are supplied 'in the course of repairing, renovating, modifying or treating', the supplier must be the person who attaches the goods to the other goods (or is contractually responsible for arranging the attachment), or uses them in the process applied to the other goods.

GST-free supply of goods used to repair, renovate, modify or treat other goods

70. To satisfy the requirements for a GST-free supply, the goods to be repaired must satisfy the description of 'from outside Australia whose destination is outside Australia' when the supply is made. Therefore, the supplier needs to determine at the time of supply that this requirement has been met.

71. Ships and aircraft (and goods on board the ship or aircraft) that are from outside Australia in transit to a place outside Australia retain the character of 'goods from outside Australia whose destination is outside Australia'.

72. For example, a yacht from outside Australia in transit to a place outside Australia that is granted Customs permission[18] to visit various locations for recreational purposes (for example, sightseeing or fishing), is goods 'from outside Australia whose destination is outside Australia'.

73. Supplies of repairs (either goods, services or both) carried out on goods, including ships or aircraft, from outside Australia whose destination is outside Australia, are therefore GST-free.

Documentary evidence

74. Record keeping for supplies covered by Subdivision 38-E is important, not only because of the general record keeping requirements of taxation laws, but also because suppliers who treat supplies as GST-free must be confident that the circumstances of the supply genuinely meet the requirements of the item in question.

75. To demonstrate that a supply is GST-free, the supplier needs to be provided with documentary evidence to show the origin and intended destination of the goods. Documents such as Customs import and export entries, international transport documents, and commercial documents provide such evidence for most goods. Suppliers must sight and retain evidence to this effect.

76. However, for goods that may arrive in Australia and depart from Australia without Customs import and export entries, such as commercial ships, aircraft or containers covered by the *Customs Convention on Containers 1972*, other types of evidence are suitable. See paragraphs 82 to 92 for more examples of documentary evidence.

[18] Permission known as a 'cruising permit' is granted under section 58 of the *Customs Act 1901*. The permission is usually granted for a set period of time. Approval under section 58 could also be granted in respect of an aircraft.

77. Suppliers are required to keep records that record and explain their transactions. The Explanatory Memorandum in general reference to section 38-185 states 'You must keep appropriate records to verify the export and when it happened.'[19] Section 70 of the *Taxation Administration Act 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
>
> (b) make a supply that is GST-free or input taxed;
>
> …
>
> 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.

78. In the Commissioner's view, records 'explain' a GST-free transaction made under Subdivision 38-E if they contain information that will enable an independent person with accounting skills and knowledge of the movement of goods into and out of Australia to understand the essential features of the transaction.

79. For a supply to be GST-free as discussed in this Ruling, the onus is on the supplier to be satisfied that goods being repaired have a destination outside Australia. The supplier will also need to have sufficient evidence to demonstrate that all of the other requirements of the particular item or items have been met.

80. The documents retained as evidence for a GST-free supply should provide a reasonable basis for an independent party, with no prior knowledge of the transaction, to be satisfied that the requirements of the item are met.

81. The following paragraphs provide a guide to the types of documents and the information they normally contain which will demonstrate that the elements of the relevant item are satisfied.

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

82. Suitable documentary evidence to show that goods being repaired are from outside Australia and have a destination outside Australia, includes copies of:

- Customs entry for home consumption in respect of the goods (the entry may indicate temporary importation, for example by a tariff concession under item 21 of Schedule 4 to the *Customs Tariff Act 1995* or by the taking of security in respect of the import duty payable if the goods are not exported in accordance with the conditions of the temporary importation);
- Evidence indicating that the goods had the required destination outside Australia, when the repair, renovation, modification or treatment is undertaken is a Customs arrival report, a cruising permit, a Customs Form 46[20] or a Customs Form 46AA[21] or actual exportation of the goods within a reasonable time after the repair, renovation, modification or treatment;
- Other import documentation, such as international carnets;
- Documents evidencing the movement of international shipping containers under the *Customs Convention on Containers 1972*;
- International transport evidence showing the movement of goods from a place outside Australia to a place in Australia;
- Customs documents relating to the export of the goods; and
- International transport documents showing the movement of goods to a place outside Australia.

83. Transport documents include bills of lading, air waybills, sea waybills, consignment notes, certificates of shipment, house bills, postal certificates and proof of delivery documents.

84. A supplier should also retain the appropriate commercial evidence, such as invoices or purchase orders and contracts.

[20] Form 46 – Application for permission to take delivery of goods upon giving a security or an undertaking for the payment of the duty – in relation to section 162 of the *Customs Act 1901*.

[21] Form 46AA – Application for permission to take delivery of goods upon giving a security or an undertaking for the payment of the duty – in relation to section 162A of the *Customs Act 1901*.

85. Some of the evidence listed above of the intended destination of goods, such as export documents, may only come into existence (or into the supplier's possession) after the supply. If a supplier that is not confident of receiving this evidence after the supply, and who does not possess other evidence at the time the supply is made, treats the supply as taxable, a refund of overpaid GST made be sought if the evidence becomes available.[22]

86. If the goods being repaired are a ship or aircraft that has not been entered for home consumption, the following evidence may be available to a supplier:

- Customs cruising permit;
- Customs certificate of clearance as evidence of departure of the ship or aircraft;
- documents relating to the foreign ownership or registration of the ship or aircraft;
- evidence of shipping routes or schedules, or flight timetables;
- a copy of the recipient's passport (for owners of small craft); and
- a declaration from the recipient that the ship or aircraft has a destination outside Australia.

87. Provided there is no information to the contrary, the Commissioner accepts a Customs cruising permit or the final certificate of clearance as sufficient evidence that the ship or aircraft, whether commercial or private, had a destination outside Australia when the repair was carried out, or goods supplied in the course of the repair.

88. The types of records available to a supplier will vary with the circumstances of the supply. A full examination of documents that demonstrate that goods were exported is made in Goods and Services Tax Ruling 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*. Table 1 in Appendix B to that Ruling lists the types of transport documentation a supplier may have, depending on the mode of transport used to export the goods. Table 2 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 or services with the import or export of goods. The lists of documents described in the Appendix to GSTR 2002/6, and in this Ruling are not exhaustive but merely offer guidance as to the types of documents available.

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[22] In order to entitled to a refund, the supplier would need to comply with the conditions contained in section 39 of the *Taxation Administration Act 1953,* which requires the supplier reimburse the overpaid GST to the recipient of the supply and that the recipient be neither registered nor required to be registered.

89. Suppliers may have other evidence to support their knowledge that the other goods were exported, or that they had a destination outside Australia.

Example 9 – evidence that the requirements of the items are met

90. *As in Example 5, an Australian supplier repairs a clock from outside Australia whose destination is outside Australia. The clock is sent to Australia by the foreign customer and entered with Customs. After the clock is repaired, the supplier delivers it to an international courier who transports the goods back to the foreign customer.*

91. *As evidence demonstrating that the requirements of a GST-free supply are met, the supplier obtains a copy of the Customs import entry. The entry shows the date of importation, and notes that no duty or GST was payable on importation due to the concessional treatment of goods imported for repair (item 21 of Schedule 4 Customs Tariff Act 1995). The supplier also retains a copy of the consignment note issued by the international courier, which states the destination of the repaired goods. These documents, in combination with commercial contracts and invoices, provide sufficient evidence that the supply is GST-free.*

Example 10 – evidence that the requirements of the items are met

92. *An international vessel arrives in Australia and unloads cargo. Before loading foreign bound cargo, the shipping company contracts with an Australian business to repair a number of shipping containers used by the shipping line. The containers are not entered for home consumption, therefore there will be no Customs import or export documentation. The Australian business delivering the repaired containers back to the international shipping company needs to obtain information that the containers are from outside Australia and have a destination outside Australia. As there are no other available documents, evidence obtained from the international shipping company, such as a declaration to that effect, is sufficient*.

Detailed contents list

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Commissioner of Taxation
30 March 2005

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Previous Rulings/Determinations:

GSTR 2003/2

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- connected with Australia
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Legislative references:

- ANTS(GST)A99 9-5
- ANTS(GST)A99 Subdiv 38-B
- ANTS(GST)A99 Subdiv 38-E
- ANTS(GST)A99 38-185
- ANTS(GST)A99 38-185(1)
- ANTS(GST)A99 38-185(2)
- ANTS(GST)A99 38-190
- ANTS(GST)A99 38-190(1)
- ANTS(GST)A99 38-190(2)
- ANTS(GST)A99 195-1
- Customs Act 1901 5C
- Customs Act 1901 58
- Customs Act 1901 162
- Customs Act 1901 162A
- Customs Convention on Containers 1972
- Customs Regulations 1926 124
- Customs Regulations 1926 125
- Customs Regulations 1926 125A
- Customs Regulations 1926 125B
- Customs Tariff Act 1995 Sch 4 Item 21
- Seas and Submerged Land Act 1973 7
- TAA 1953 Sch 1 Div 358
- TAA 1953 70

Other references:

- Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998
- Macquarie Dictionary 2001, revised 3rd edn, The Macquarie Library Pty Ltd, NSW

ATO references

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