GSTR 2005/6A - Addendum - Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999

Addendum

Goods and Services Tax Ruling

Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*

Goods and Services Tax Ruling GSTR 2005/6 states that where a supply is provided to a non-resident entity outside Australia and another entity in Australia, but it is not possible to identify separate parts of the supply flowing to each entity, then no apportionment is required (refer to paragraphs 143 and 662 of that Ruling).

This Addendum amends GSTR 2005/6 to change this view consistent with the view in GSTR 2007/2.

Having regard to the principles in *Ronpibon Tin v. FC of T* (1949) 78 CLR 47 as reflected in GSTR 2006/4 (see paragraphs 98 to 100 of that Ruling), if a supply is provided to both an entity that is in Australia and an entity that is not in Australia but it cannot be said that there are separate and distinct parts of the supply provided to each entity, that supply is nonetheless apportionable on a fair and reasonable basis.

This change in view means that a supply that was not regarded as apportionable and thus not GST-free may now be GST-free to some extent.

This Addendum also corrects a minor inconsistency in wording as between GSTR 2005/6 and GSTR 2007/2 in relation to the application of subsection 38-190(3) to a supply of delivery or freight services provided to another entity.

Where goods from one entity are addressed for delivery to another entity in Australia, we accept that the delivery or freight services are provided to that addressee entity in Australia (refer to paragraph 377 of the Ruling). This is because in our view the practical effect of the application of subsection 38-190(3) to freight or delivery services is that the supply is provided to the entity to which the goods are addressed and at the location as determined by the address on the goods.

Therefore, at paragraphs 75 and 282 and in Flowchart 3C of GSTR 2005/6 we replace the words 'we consider' with 'we accept' consistent with other paragraphs in GSTR 2005/6 and GSTR 2007/2.

This Addendum applies on and from 1 July 2000. (GSTR 2005/6 explains our view of the law as it applies on and from 1 July 2000.)

You can rely on this Addendum, for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*, from its date of issue.

GSTR 2005/6 is amended as follows:

1. Paragraph 75

Omit 'we consider' and substitute 'we accept'.

2. Paragraph 143

Omit the paragraph; substitute:

> 143. Sometimes the same supply of services is provided to a non-resident entity outside Australia *and* another entity in Australia and it is not possible to identify separate parts of the supply flowing to each entity. If the supply is covered by item 2, subsection 38-190(3) negates the GST-free status of the supply to the extent that the supply is provided to the other entity in Australia. As explained at paragraph 141 of this Ruling it is necessary to apportion the consideration for the supply between the GST-free and taxable parts of the supply on some fair and reasonable basis taking into account the particular circumstances of the supply. See Example 43, paragraphs 663 to 671 of Part VII of the Explanation section of this Ruling.

3. Box under Q 3, Flowchart 3C at page 35

Omit 'we consider' and substitute 'we accept'.

4. Paragraph 282

Omit 'we consider' and substitute 'we accept'.

5. Paragraph 662

Omit the paragraph; substitute:

> 662. Sometimes a supply of services might, for example, be made and provided to a non-resident entity that is not in Australia and also provided to another entity in Australia in circumstances where the supply is not divisible with separate parts of the supply being provided to each entity. Section 9-5

provides that a supply is not a taxable supply to the extent that it is GST-free (or input taxed).

662A. As explained at paragraph 66 of GSTR 2006/4 the High Court in *Ronpibon Tin v. FC of* T[98A] (*Ronpibon Tin*) indicated, in the income tax context, that if a certain expense, such as directors' fees, has a 'double aspect', it will need to be apportioned if it 'cannot be dissected'.[98B] As further explained in GSTR 2006/4 the High Court also emphasised the necessity of considering the facts of the particular case.[98C]

662B. Thus if a supply is provided to both a non-resident entity outside Australia and another entity in Australia, but it cannot be said that there are separate and distinct parts of the supply provided to each entity, that supply is nonetheless apportionable on a fair and reasonable basis.

662C. The method used by the supplier to apportion the supply must result in a fair and reasonable reflection of the extent to which the supply is provided to the non-resident entity outside Australia (GST-free part of the supply) and the other entity in Australia (taxable part of the supply). The method used must also be appropriately documented by the supplier.[98D]

662D. Having determined the taxable and GST-free parts of the supply, the consideration for the supply is required to be apportioned between those parts. The Commissioner considers that the GST Act requires apportionment of consideration as between the taxable component and the non-taxable component of a supply.[98E]

662E. The following example illustrates a supply that is provided to both a non-resident entity and other resident entities.

6. Paragraphs 669 to 671

Omit the paragraphs; substitute:

669. *To the extent that the supply of pathology services is provided to each medical practitioner those services are provided to another entity.*

[98A] (1949) 78 CLR 47.
[98B] See *Ronpibon Tin* (1949) 78 CLR 47 at 59.
[98C] See *Ronpibon Tin* (1949) 78 CLR 47 at 58-9 and paragraph 99 of GSTR 2006/4.
[98D] See *Ronpibon Tin* (1949) 78 CLR 47 at 58-9 and paragraph 100 of GSTR 2006/4.
[98E] Refer to GSTR 2001/8 at paragraphs 82 to 91 for a discussion of the general rule of apportionment.

(ii) Provided to that other entity in Australia

670. *To the extent that the supply of pathology services is provided to each medical practitioner those services are provided to another entity in Australia. To this extent subsection 38-190(3) negates the GST-free status of the supply of those services from the pathology company to the pharmaceutical company. To the extent that the supply of pathology services is provided to the non-resident pharmaceutical company outside Australia subsection 38-190(3) does not negate the GST-free status of the supply of those services.*

671. *The consideration for the supply is required to be apportioned between the GST-free part of the supply (that part of the supply that is provided to the non-resident pharmaceutical company) and the taxable part of the supply (that part of the supply which is provided to the Australian medical practitioners). Apportionment is required on a fair and reasonable basis taking into account the particular facts of the case. In the circumstances of this case the Australian pathology company might take into account how many medical practitioners in Australia are supplied with the results of the tests (taxable part of the supply) as against the supply to the non-resident pharmaceutical company outside Australia (GST-free part of the supply) in apportioning the consideration received for the supply.*

7. Related Rulings/Determinations

Insert:

GSTR 2006/4;

8. Case references

Insert:

- Ronpibon Tin v. FC of T (1949) 78 CLR 47

Commissioner of Taxation
24 April 2007

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