


SST 13 - Sales tax: general-purpose road vehicles for use in mining or prospecting operations

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Taxation Ruling

Sales tax: general-purpose road vehicles for use in mining or prospecting operations

This document is a public Ruling for the purposes of section 77 of the Sales Tax Assessment Act 1992 and may be relied upon as if it had the force of law.

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Chapter 1: What this Ruling is about

Overview

- 1.1 Goods, including eligible raw materials and parts, for use mainly in carrying out one or more mining or prospecting operations, in the course of a business of carrying out such operations, may qualify for exemption from sales tax under Item 1 in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* (ST(E&C) Act).
- 1.2 Exemption Item 1 contains the following *exclusions*:
 - (a) generally-excluded property (as defined by section 12 of the ST(E&C) Act), which includes certain luxury motor vehicles;

- (b) general-purpose road vehicles (GPRVs),¹ unless they are for use exclusively in certain restricted locations; and
- (c) goods for use mainly in connection with administrative activities.

(See also section 13 of the ST(E&C) Act, which sometimes denies exemption if the exemption goods are for use in connection with property covered by subitem 1(3) in Schedule 1 to the ST(E&C) Act.)

- 1.3 This Ruling only considers the second category of exclusions, namely, general-purpose road vehicles. It examines what is meant by the term 'general-purpose road vehicle' and gives examples of certain vehicles which are GPRVs.
- 1.4 The Ruling then sets out principles to determine those restricted locations where exclusive use of the vehicle maintains entitlement to exemption under Item 1 despite the vehicle's identification as a GPRV.
- 1.5 It also considers whether GPRVs that do not satisfy the requirements of Item 1 may qualify for exemption under Item 28 in Schedule 1 to the ST(E&C) Act, if they are for use mainly in carrying out storage, handling, transport or dispatch activities associated with mining or prospecting operations.
- 1.6 The Ruling considers the application of Item 38, Schedule 1 to the ST(E&C) Act that applies to goods used for mixed activities.
- 1.7 Finally, the Ruling considers whether GPRVs for use by contractors to mining or prospecting operators may qualify for exemption under Item 36 in Schedule 1 to the ST(E&C) Act.

Intention to satisfy an exemption Item

- 1.8 Goods covered by an exemption Item are exempt if the user has the intention, at the time of the assessable dealing (taxing point) of satisfying an exemption Item during the whole of the statutory period.²

Date of effect

- 1.9 This Ruling is effective immediately and replaces any previous public or private Rulings to the extent that they are inconsistent with this Ruling. If any person has been acting on the basis of any such previous private Ruling, they have until 19 November 1998 to comply with this Ruling.

¹ See definition of 'general-purpose road vehicle' in 'Definitions' section of Appendix 1.

² See definition of 'statutory period' in 'Definitions' section of Appendix 1.

Chapter 2: A single, fully integrated unit or a vehicle made up of separate components?

- 2.1 A necessary first step to classifying a vehicle for sales tax purposes is to determine whether the vehicle is a single, fully integrated unit or whether it is made up of separate components (i.e., does it have equipment mounted on it that can be classified for sales tax separately from the unit?).
- 2.2 Following the decision of the Full Supreme Court of Victoria in *ICI Australia Operations Pty Ltd v. DFC of T*,³ the Commissioner issued Taxation Ruling ST 2432 dealing with mobile explosives manufacturing units and the classification of other specialised vehicles.
- 2.3 That Ruling (which is not altered by this Ruling) determines that where the vehicle is a single, fully integrated unit (i.e., the vehicle operates as one unit) the vehicle is classified as one unit. Where the specialised equipment attached to the cab chassis operates independently, then the cab chassis is classified separately from the specialised equipment.⁴
- 2.4 Whether a road vehicle is a single, fully integrated unit is a question of fact and degree to be looked at in each case. Factors that are taken into account include:
- the amount and type of modifications to the cab chassis or other vehicle; and
 - the degree of integration of the equipment into the cab chassis or other vehicle.
- 2.5 Whether equipment mounted on a vehicle is fully integrated with it does not determine whether the vehicle is a GPRV. The degree of integration determines only whether the vehicle is classified separately from the equipment mounted on it or as a single unit.
- 2.6 Where it is decided that a particular vehicle is not an integrated unit and is to be classified according to its components, it is necessary to determine whether those components are *parts* within the definition of 'parts' in the legislation⁵ (see paragraphs 3.25 to 3.27 of this Ruling).

³ 87 ATC 5110; (1987) 19 ATR 647.

⁴ See 'Examples of vehicles used in mining or prospecting operations' at paragraph 3.7.

⁵ See 'Definitions' at Appendix 1.

Chapter 3: When is a vehicle a GPRV?

- 3.1 Having determined whether the vehicle is a fully integrated unit, there are two components to the definition of GPRV that need to be considered:
- Is it a road vehicle?
 - Is it of a kind ordinarily used for the transport of persons or the transport or delivery of goods or other property?

What is a 'road vehicle'?

- 3.2 The term 'road vehicle' refers to the **class** of vehicle, not to the actual **use** to which a particular vehicle may be put. It is a road vehicle if it is of a class of vehicle that is designed for use on public roads and it would be a road vehicle even though it may never be used or registered for use on public roads.
- 3.3 A common example of a road vehicle is the class of vehicles described as four-wheel drives (4WD). This class of vehicle is ordinarily designed to be used both on public roads and in off-road situations. Because this class of vehicle is designed to be used on public roads, it is a road vehicle even though such a vehicle used in a mining operation may be unregistered or, if registered, may never leave the mining site.⁶
- 3.4 By way of contrast, a vehicle in a class that can clearly be seen to have been designed for use off-road, with only limited design features enabling its use on public roads, is not a road vehicle. This is so even though, with significant restrictions in relation to matters such as speed and load, the vehicle may be used on public roads in particular and limited circumstances, or may be required to be registered for use on public roads in particular circumstances.

Meaning of road vehicles 'of a kind ordinarily used for the transport of persons or the transport or delivery of goods or other property'

- 3.5 The definition requires the road vehicle to be of a class of road vehicles commonly or routinely used in the transport of persons or the transport or delivery of goods. The decision to be made is not whether a particular road vehicle is actually used for this purpose but whether it belongs to a class of road vehicles that is commonly used

⁶ See *DFC of T v. ICI Australia Operations Pty Ltd* 87 ATC 4069 at 4076; (1987) 18 ATR 313 at 321.

for this purpose.⁷ Some typical examples of GPRVs where the purpose and customary use is to transport persons or goods include cars, buses, utility trucks, pantechnicons and articulated vehicles such as semi-trailers and road trains.

- 3.6 Road vehicles that are not characterised as of a kind that are ordinarily used for the transport of persons, or the transport or delivery of goods or other property, are those where:
- (a) the transport or delivery use is incidental, subordinate or secondary to the use of the road vehicle, as a class of goods, for another purpose; and
 - (b) their primary use, as a class of goods, is for that other purpose.⁸

Examples of vehicles used in mining or prospecting operations

- 3.7 A wide range of vehicles is used in mining or prospecting operations. The following examples are given to show how the principles outlined above may be applied to determine whether a vehicle:
- qualifies for exemption under Item 1 as goods for use mainly in carrying out mining or prospecting operations; or
 - is a GPRV which must satisfy further tests (described later in this Ruling) if it is to qualify for exemption under Item 1.

Specially modified underground mining vehicles

- 3.8 Major modifications may be carried out on standard vehicles (usually 4WDs) before the assessable dealing so that the vehicle can be used in underground mining operations. Modifications may include significant body work, changes to the gearbox so that only low range 4WD may be engaged, speed limiters, changes to the electrical systems, the fitting of specialised equipment, etc. Major modifications along these lines take the vehicle out of the class of GPRV.
- 3.9 Minor modifications, such as the removal of lights, bumpers and doors, etc., do not take a vehicle out of the class of GPRV even though the vehicle, in this form, may not be able to be registered for use on a public road.

Fully integrated mobile drilling rigs, mobile cranes, tractor cranes

- 3.10 These vehicles, often built from the ground up, are designed for a particular purpose, e.g., drilling bore holes, lifting equipment, etc. They are fully integrated and are

⁷ See decisions of the courts that have considered the meaning of the phrase 'of a kind ordinarily used' including *Hygienic Lily Ltd v. DC of T* 87 ATC 4327; (1987) 18 ATR 619; *O R Cormack Pty Limited v. FC of T* 92 ATC 4121; (1992) 23 ATR 151; *Diethlem Manufacturing Pty Ltd v. FC of T* 93 ATC 4703; (1993) 26 ATR 465 and *FC of T v. Chubb Australia Ltd* 95 ATC 4186; (1995) 30 ATR 285.

⁸ *ICI Australia Operations Pty Ltd v. DC of T (Vic)* 87 ATC 5110; (1987) 19 ATR 647.

classified as a single unit. While many of these are registered for road use and are obviously road vehicles, any transport of persons or goods (such as drilling rods, cables, etc.) is incidental to the main purpose of the vehicle. The vehicles are not GPRVs.

- 3.11 Equipment, such as drilling equipment, a post hole digger or a crane, is sometimes mounted onto a tray top truck or cab chassis and the equipment operates separately from the truck or cab chassis. This does not normally result in the vehicle being a single integrated unit and the truck or cab chassis is treated as a road vehicle. The equipment mounted onto the vehicle is classified separately (bearing in mind the definition of 'parts' in relation to road vehicles).

Service vehicles

- 3.12 Vehicles may be fitted with various items of equipment for use in servicing large mining machinery, such as drilling rigs and excavators. The servicing equipment may include fuel tanks, dispensing equipment, oil and grease storage facilities, lubrication equipment, compressors, tool storage, etc. This equipment is usually mounted onto a tray top truck or a standard cab chassis or one that may have been modified in a minor way to accommodate the service equipment.
- 3.13 These vehicles are not fully integrated vehicles and the vehicle or cab chassis is classified separately from the servicing equipment mounted on it. The vehicle is a GPRV.
- 3.14 If the service equipment (compressors, lubrication equipment, etc.) is merely mounted onto a tray top truck and used mainly in the servicing of exempt mining equipment, it is exempt under Item 1 regardless of where it is used.

Explosive manufacturing vehicles

- 3.15 Having regard to the decision in the *ICI* case⁹ and Taxation Ruling ST 2432, vehicles of the kind considered in the *ICI* case are not GPRVs.

Water trucks/tankers

- 3.16 Road vehicles fitted with tanks whose basic purpose is to convey water to support mining/drilling operations are GPRVs.

Dump trucks

- 3.17 The type of dump trucks referred to here are large mine haul dump trucks (approximate capacity of 80 to over 200 tonnes) with an upswept rear end to

⁹ *ICI Australia Operations Pty Ltd v. DC of T (Vic)* 87 ATC 5110; (1987) 19 ATR 647.

facilitate tipping. While they are used to carry goods, these types of vehicles are not of a class of vehicle designed for use on public roads and are not GPRVs.

- 3.18 Sometimes, when these types of dump trucks reach the end of their useful lives as haul trucks, they are converted to water tankers for use in watering mine haul roads. These vehicles are usually Australian used goods and the need to classify them may not arise. However, should they need to be classified, they are similar to dump trucks and are not GPRVs.

4WD pit vehicles

- 3.19 These are usually standard 4WD vehicles, often fitted with safety equipment, such as flashing lights or tall flag-topped aerials, and are used to transport personnel and equipment around the mine pit. They are GPRVs.

Hi-rail vehicles

- 3.20 These are vehicles (usually 4WD) that have hydraulically-operated equipment mounted at the front and rear which, when lowered, allows the vehicle to run along a railway line.
- 3.21 Hi-rail vehicles are GPRVs. The hi-rail equipment mounted on the vehicles does not take them out of the class of vehicles of the kind used for the transport of persons, etc. They are merely adapted for a particular purpose.

Cable laying vehicles

- 3.22 These are usually cab chassis or tray top trucks with provision for large cable spools to be carried for cable laying activities. They are GPRVs. If cable laying equipment is merely sitting on the back of the vehicle, it is classified separately from the vehicle and may qualify for exemption depending on its use.

Mobile laboratories or survey vehicles

- 3.23 Specially fitted-out trucks are often used as mobile laboratories, survey vehicles or the like. These vehicles have specialised equipment mounted in or on them in order to carry out the desired function. For example, in the case of mobile laboratories, there may be various testing equipment, computers, etc., or for survey vehicles, there may be seismic survey equipment, computer recording devices, GPS systems, etc.
- 3.24 These vehicles are usually normal road vehicles with or without minor modifications and are GPRVs. The equipment mounted on the vehicle, if used mainly in qualifying mining or prospecting operations, is covered by Item 1 regardless of where it is used.

Parts for road vehicles

- 3.25 The definition of 'parts'¹⁰ covers goods that are parts within the ordinary meaning of the term (i.e., spare parts) and also extends to include further goods such as:
- (a) bodies for those road vehicles (including insulated bodies, tank-bodies, and other bodies designed for the transport or delivery of goods or other property of particular kinds); and
 - (b) underbody hoists, and other equipment or apparatus of a kind ordinarily fitted to road vehicles for use in connection with the transport or delivery of goods or other property by those road vehicles.
- 3.26 If the road vehicle is a GPRV, the parts are exempt from sales tax if the GPRVs qualify for exemption. This is provided by subitem 1(2) of Schedule 1 to the ST(E&C) Act and paragraph (b) of the definition of eligible raw materials and parts in subsection 11(1) of the ST(E&C) Act. Parts for GPRVs are taxable if the GPRVs do not qualify for exemption.
- 3.27 Exemption does not automatically extend to accessories for the above vehicles unless they are installed as part of a new, exempt GPRV before the taxing point. For exemption to apply to goods in the nature of accessories sold separately after the taxing point and installed in the exempt GPRV, e.g., two-way radios or mobile phones, they must be used mainly in circumstances covered by the relevant exemption Item for the whole of the statutory period.

Chapter 4: Where must a GPRV be used to maintain exemption under Item 1?

- 4.1 Item 1 of Schedule 1 to the ST(E&C) Act provides exemption for certain goods used in mining activities. However, subitem 1(3)(b) specifically excludes a GPRV from exemption unless it is **for use exclusively**:
- **within premises controlled** by the exemption user and used by the exemption user mainly in carrying out one or more of the activities covered by subitem 1(1); and/or
 - in going between such premises that are adjacent.

¹⁰ See 'Definitions' at Appendix 1.

- 4.2 There is also the additional requirement in Item 1 that the GPRV cannot be for use, to any extent, in any part of those premises that is used, or for use, mainly in connection with a township, accommodation complex or similar place. At **Appendix 2** is a flow chart that outlines the steps to determine whether exemption applies under Item 1 for vehicles that have been identified as GPRVs.

What is meant by 'for use exclusively'?

- 4.3 The phrase 'for use exclusively' is not defined in the legislation. *The Macquarie Dictionary* defines the term 'exclusive' as being:

'1. not admitting of something else; incompatible: *mutually exclusive ideas*. 2. excluding from consideration or account ... 3. limited to the object or objects designated ... 4. shutting out all others from a part or share: *an exclusive grant*. 5. shutting out all other activities: *an exclusive occupation*. 6. in which no others have a share: *exclusive information*. 7. single or sole: *the exclusive means of communication between two places*.'

- 4.4 Small but regular use of a GPRV away from premises means that a GPRV is excluded from exemption even though the overall use for this purpose is a small proportion of the vehicle's total use. Vehicles regularly taken away from the premises at night or weekends do not qualify for exemption even though the use off premises is relatively minor. Similarly, road vehicles that regularly (e.g., monthly) leave the premises to pick up parts or supplies do not qualify for exemption.
- 4.5 However, occasional, irregular or insignificant use away from premises does not disqualify a GPRV from exemption from sales tax. Examples of use away from premises that are acceptable as occasional, irregular or insignificant include:
- yearly motor vehicle registration tests;
 - necessary servicing of the vehicle away from the premises; and
 - emergency situations where a vehicle is required to be taken 'off site'.

What are 'premises'?

- 4.6 Mining activities are normally conducted on land that is freehold, leasehold, the subject of a particular type of mining tenement under the relevant State Mining Act or the subject of specific legislation that outlines a particular project and sets out the controls, rights, etc., of the participants in the project.
- 4.7 Mining tenements are largely governed by State legislation and may vary from State to State. The main types of tenements that are common to most States are:
- mining leases;
 - general-purpose leases;
 - prospecting licences;

- exploration licences; and
 - miscellaneous licences.
- 4.8 Each tenement sets out the rights of the holders to carry out various activities relating to mining on certain Crown land, public reserves or on private land. The rights vary according to the type of tenement and the type of property on which the activities are to be carried out.
- 4.9 For the purposes of the exemption for GPRVs under Item 1, 'premises' includes freehold and leasehold property and also includes those tracts of land covered by State Acts and various mining tenements that allow mining, prospecting, or restoration or rehabilitation operations to be carried out.
- 4.10 This view is supported by the AAT¹¹ where it was decided that:
- '... "premises", in the present context, includes adjoining mineral leases being mined, mineral leases held for mining or prospecting operations, exploration or prospecting licences and integral miscellaneous licences and the lease or freehold on which is located the processing plant.'

What constitutes 'control' of premises?

- 4.11 The definition of 'controlled'¹² when used in relation to premises includes owned or leased premises. Mining leases are premises controlled by the lessee for the purposes of the definition of 'controlled', and activities conducted by persons on mining leases held by them are conducted on premises controlled by them.
- 4.12 Although prospecting or exploration licences relate to premises, they do not pass an interest in the land as a lease does. The question arises whether the right to conduct certain limited activities on the premises amounts to control of the premises for the purpose of the exemption.
- 4.13 Control of premises arises from the possession of interests or rights relating to the premises. 'Controlled' is a relative term capable of a wide range of meanings. *The Macquarie Dictionary* defines 'control' to mean:
- 1. to exercise restraint or direction over; dominate; command.
 - 4. the act or power of controlling; regulation; domination or command.
 - 5. check or restraint.'

The meaning of 'controlled' in any single instance relates to its context. The context here is the use of 'controlled' in Item 1.

- 4.14 Subitem 1(3)(b)(i) makes no reference to the degree of control that must exist over the premises. It is largely a question of fact whether the type of tenement held over

¹¹ Case 21/96 96 ATC 257 at 270; AAT Case 10,716 (1996) 32 ATR 1132 at 1146.

¹² See 'Definitions' at Appendix 1.

an area gives that person control over the premises. In circumstances where a right over the premises can be identified, giving rise to a form of control, the strict terms of the control requirement would appear to have been met.

- 4.15 Item 1 specifically includes exploring or prospecting in the definition of mining or prospecting operations at subitem 1(4). Prospecting, exploration and miscellaneous operations are generally conducted on premises under licences, not leases, and give some limited rights to the holder over the premises used. Unless the relevant statutes governing these licences show otherwise, rights associated with those prospecting, exploration and miscellaneous operations would generally provide the relevant form of control required by subitem 1(3)(b)(i).

Miner's rights, etc

- 4.16 A licence, such as a miner's right that gives a person some limited rights, including the right to prospect or explore on Crown or other land, does not result in control of premises. There are usually no premises stipulated by a miner's right.

Premises controlled

- 4.17 For the purposes of subitem 1(3)(b)(i) the term 'controlled' allows for the type and degree of control that is relevant to subitem 1(1) activities, including:
- mining operations;
 - prospecting or exploration operations; or
 - restoring or rehabilitating a site.

- 4.18 This view is supported by the AAT¹³ where it was decided that:

'The definition of "controlled", in relation to premises, includes premises either owned or leased. In this context, the tenements are for "mining or prospecting operations", and are in a loose sense "leased". However, for reasons stated below, mining tenements which include public roads, to that extent, despite ss. 66, 67 and 91 of the *Mining Act 1978* (WA), are not controlled by the lessee.'

and:

'... the principals' mining tenements, with the exclusion of those over public carriageways, are "controlled" by them within the meaning of Item 1 of Schedule 1 to the *Exemptions Act*.'

- 4.19 Travel on public roads is clearly not within premises controlled by the exemption user. Consequently, a GPRV that travels on public roads between premises is excluded from exemption unless the premises are adjacent.¹⁴

¹³ Case 21/96 96 ATC 257 at 270-271; AAT Case 10,716 (1996) 32 ATR 1132 at 1147.

¹⁴ See paragraphs 4.24 to 4.32 of this Ruling.

- 4.20 In general, where a miscellaneous licence is granted under a Mining Act for the construction and maintenance of a private road, the road is considered to be premises controlled by the exemption user. Where there is no miscellaneous or other licence covering the road corridor and it is merely on Crown land, there are no premises controlled by the miner. Vehicles used to travel between premises on these types of roads do not satisfy the requirements of the exemption unless the premises are adjacent.¹⁵

Use of premises

- 4.21 The premises must not only be controlled by the relevant person, but must also be used by that person mainly in carrying out one or more activities covered in subitem 1(1). Where a GPRV travels in or between premises that are used mainly for activities not covered by the subitem, those premises do not satisfy this criterion and the GPRV is not exempt.
- 4.22 Generally speaking, it is not necessary to show that mining or exploration is actually being undertaken at all relevant times on those premises, provided that an appropriate lease or licence is held by the exemption user indicating an intention to carry out such activities.
- 4.23 If the premises are controlled by way of a pastoral lease, for example, and no mining, exploration, or other activity specified in subitem 1(1) is actually being undertaken on those premises, GPRVs used on those premises do not qualify for exemption under Item 1.¹⁶

What are 'adjacent' premises?

- 4.24 Assuming the requirements relating to exclusive use of the vehicle and control and use of premises are satisfied, a GPRV qualifies for exemption if it is for use exclusively:
- (a) within those premises; or
 - (b) in going between controlled adjacent premises; or
 - (c) for a combination of (a) and (b).
- 4.25 The term 'adjacent' is not defined in the legislation and so takes its ordinary meaning. It is defined in *The Macquarie Dictionary* as:
- 'Lying near, close, or contiguous; adjoining, neighbouring: a field adjacent to the main road.'

¹⁵ See paragraphs 4.24 to 4.32 of this Ruling.

¹⁶ Note: This does not preclude the GPRV from qualifying for exemption under another Item, e.g., Item 2, if the relevant conditions of that Item are met.

- 4.26 In *FC of T v. BHP Minerals Ltd*¹⁷ Toohey and Lockhart JJ, in considering the meaning of 'at a place adjacent to', referred to the opinion of the Judicial Committee of the Privy Council in *Mayor of Wellington v. Mayor of Lower Hutt*¹⁸ that:

' "Adjacent" is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining, and it includes places close to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances ...'

- 4.27 Toohey and Lockhart JJ went on to note that where a word is not defined in the legislation, the ordinary meaning should first be considered and then it should be considered whether that meaning needs to be qualified in some way by the context in which it appears.

Rural areas

- 4.28 Premises in rural areas that are separated by very short distances, for example:

- by a roadway, railway line or the like; or
- by a small piece of land of one other property holder, field or parkland

are likely to be adjacent. Premises that are separated by suburbs, towns or several other properties are not adjacent.

Remote areas

- 4.29 The explanatory memorandum accompanying the Sales Tax (Exemptions and Classifications) Bill 1992, which became the ST(E&C) Act, considers the term 'adjacent':

'Adjacent premises: The reference in the existing law to contiguous premises will be changed to adjacent premises.

'Reason for change: Adjacent is a more commonly used word. This change will not alter the scope of the current exemption.'

The relevant item, as it appeared in the predecessor legislation, was amended by the Sales Tax Laws Amendment Bill (No 3) 1991 which became the Sales Tax Amendment Act (No 2) of 1991. The term 'contiguous premises' was not defined in the legislation. However, the explanatory memorandum explained its meaning as follows:

'As discussed earlier, general purpose road vehicles are eligible for exemption within the main categories of eligible business goods where used exclusively within certain premises.

¹⁷ 83 ATC 4407 at 4412; (1983) 14 ATR 389 at 395.

¹⁸ [1904] AC 773.

However, in some cases, such vehicles may be used exclusively within, or between, adjacent or adjoining production premises which may, for example, be separated only by a public road. ...

Clause 14 allows exemption for general purpose road vehicles that are for use exclusively both within and in going between "contiguous" areas.

"Contiguous premises" is an established sales tax concept. Other exemption items in which the term 'contiguous' occurs include the aids to manufacture definition, which allows exemption for storage of raw materials and work-in-progress in the manufacturing premises "or premises contiguous to any such premises".

The term "contiguous" has been subject of judicial interpretation in other legislation, and consistent with the existing sales tax law, the term will not be defined in this Bill.

The term covers travel between adjacent or abutting premises which are owned, leased or controlled by the goods producer concerned. ...

Remote Areas

In remote areas, premises separated by short distances may also be treated as being contiguous. For example, mining leases separated by 5 kilometres of desert in the remote outback would be considered to be contiguous premises. Travel exclusively within and between the two leases would qualify vehicles for exemption. However, the two leases would not be considered to be contiguous if they were separated by a township.'

- 4.30 In *Case 21/96; AAT Case 10,716*¹⁹ the Administrative Appeals Tribunal examined other cases²⁰ where the courts have considered the notion of 'contiguous' or the scope of the term 'adjacent premises'. The Tribunal concluded those cases were either decided on their own facts or in their own context and did not provide the answer to the meaning of adjacency in the context of the sales tax legislation.
- 4.31 In summary, premises are adjacent when they are abutting, close or near and not distant or remote from each other. It is not possible to give precise measurements or distances between premises that do or do not result in their being adjacent. Each case needs to be looked at having regard to the geographical location of the premises and other relevant factors such as:

¹⁹ 96 ATC 257; (1996) 32 ATR 1132.

²⁰ *FC of T v. BHP Minerals Ltd* 83 ATC 4407; (1983) 14 ATR 389; *Re: Western Australian Government Railways Commission (Westrail) and Collector of Customs* (1994) 36 ALD 158; *Re: Alcoa of Australia Ltd and The Western Australian Government Railways Commission (Westrail) And: Collector of Customs* (unreported, Nos W90/282-283 and W91/134 AAT No 7764, 1992).

- whether the premises are separated by a township, or other premises controlled by other persons; and
- whether the actual route taken by the GPRV (in going between premises controlled by the same person) requires it to travel through a township or other premises controlled by other persons.

4.32 For example:

- A GPRV that travels on public roads and through either a township or several other properties when going between premises controlled by the same person, is not for use in going between adjacent premises.
- A GPRV is for use in going between adjacent premises where it travels on public roads that run alongside boundaries of adjoining mining premises of the same person. Similarly, where the two eligible premises are separated by a public road, travel across the road is travel between adjacent premises.

Appendix 3 contains diagrams showing examples of premises that are adjacent and others that are not.

Use of GPRVs in townships, accommodation complexes or similar places

- 4.33 In addition to the requirements relating to control of premises outlined in paragraphs 4.6 to 4.32 above, Item 1 **excludes** from exemption GPRVs that are for use to any extent in any part of those premises used or for use mainly in connection with a township, accommodation complex or similar place. The exclusion envisages identification of a part of larger premises for use as a township, accommodation complex or similar place.
- 4.34 In many cases, mining activities are carried out at remote or relatively remote areas where the miner is required to provide accommodation and other facilities for the workers. The accommodation facilities are often located on the mining property or very close to it, or alternatively, a nearby township is used.
- 4.35 Often, vehicles used almost entirely in carrying out mining activities may be taken to the accommodation complex or township at breaks or at the end of the shift. This may be for a number of reasons, such as:
- there is no other transport available from the actual mine area to the accommodation facilities;
 - the driver of the vehicle is on call and requires the vehicle near to hand to attend emergency call-outs;
 - there is greater security available around the accommodation area; and
 - it is general practice to do so.

What is meant by a 'township, accommodation complex or similar place'?

- 4.36 The terms 'township' and 'accommodation complex' are not defined in the legislation, so they take their ordinary meaning. *The Macquarie Dictionary* defines 'township' as:
- '1. a small town or settlement';
- and, as far as is relevant, defines 'accommodation' as:
- '6. Lodging, or food and lodging'.
- 4.37 In the context in which these terms appear in Item 1 they are taken to mean areas where people live (whether permanently or not) or are provided with lodging, with or without food. They include areas occupied by facilities associated with the provision of accommodation and located near to the accommodation.
- 4.38 A township, accommodation complex or similar place does not include small temporary facilities such as a transitory exploration camp consisting of tents or caravans, which is regularly moved from one site to another as exploration activities progress.
- 4.39 Small camps consisting of permanent or semi-permanent accommodation, such as transportable or skid mounted single men's quarters/messes/ablution blocks and other facilities connected to water and power supplies and in location for the duration of the mining activities, are an accommodation complex.
- 4.40 It is a question of fact and degree as to whether a particular facility is a township, accommodation complex or similar place. Factors that are taken into account when determining this include:
- the size of the establishment;
 - the types of facilities provided;
 - the degree of permanency of the settlement; and
 - how long the settlement is intended to remain in place or how often it can be expected to be relocated.
- 4.41 On occasions there may be difficulties in determining what area is covered by a township, etc., and where the boundaries of this area may be. This is often because the area may be in a remote locality and there may not be any division between the township, etc., and the rest of the mining lease. Also, there may be other facilities located nearby. This is discussed in further detail in paragraphs 4.42 to 4.47 below.

Part of premises used or for use 'in connection with' a township, accommodation complex, or similar place

- 4.42 The term 'in connection with' is a very wide term. In *Collector of Customs v. Cliffs Robe River Iron Associates*²¹ it was said by the Full Federal Court:

'The meaning of the word "connection" is both wide and imprecise. One of its common meanings is "relation between things one of which is bound up with, or involved, in another" (*Shorter Oxford English Dictionary*).'

- 4.43 An area for use in connection with a township, accommodation complex or similar place is taken to include areas occupied by facilities located near to, and provided as part of, a township or accommodation complex. Examples of such facilities include canteens, messes and entertainment and recreational areas such as ovals, theatres, swimming pools, tennis courts or other facilities. A crib-room on a minesite and away from the township, for example, near the open pit or processing area, is not for use mainly in connection with the township.

Is a parking area 'for use in connection with a township, accommodation complex or similar place'?

- 4.44 It may be necessary to determine whether parking areas at or near a township, etc., are included as part of premises used in connection with the township, etc. This is a question of fact and degree to be determined on a case by case basis. In some cases, it is clear whether or not a particular parking area is part of premises used in connection with a township, etc. For example:

- individual parking facilities, such as a carport or drive attached to a house or unit within a township or accommodation complex, are clearly part of premises used in connection with a township, etc.;
- a parking area at the minesite, located some kilometres from the accommodation area, that employees are transported to and from, is not part of those premises.

- 4.45 A parking area immediately adjacent to an accommodation complex may be part of the premises used mainly in connection with an accommodation complex. The factors that need to be considered in these situations are:

- the relative locations of the area and the accommodation complex;
- the purpose of the parking area and why vehicles are parked there; and
- the general impression received when looking at the total area of whether a particular part of it (the parking area) is for use mainly in connection with the township, etc., or for use mainly in connection with some other area.

²¹ (1985) 7 FCR 271 at 275.

- 4.46 If the area provides parking for vehicles used to transport **workers and/or goods** to and from the accommodation complex, the parking area is part of premises used in connection with a township, etc. It follows that vehicles that travel into the parking area are used to some extent within part of premises used in connection with a township, etc., and are not exempt from sales tax under Item 1. This would be the case even though the vehicles are used mainly in mining and prospecting operations and are only taken to the parking area at break times or at the end of the shift, etc.
- 4.47 Alternatively, where a parking area is located adjacent to a vehicle workshop located near or next to an accommodation complex, it is a question of fact as to whether that area is used mainly in connection with the workshop or in connection with the accommodation complex.

Use, to any extent, in

- 4.48 The exclusion in subitem 1(3)(b) applies where the GPRV is **for use, to any extent, in** any part of premises described in subitem 1(3)(b)(i) that is used (i.e., the premises are used), or for use, mainly in connection with the township, accommodation complex or similar place.
- 4.49 The exclusion in subitem 1(3)(b) applies if the GPRV is used 'in' the relevant premises rather than 'in relation to' or 'in connection with' the premises. That is, the question is whether the vehicle travels within the spatial limits of the excluded premises. Typical examples of GPRVs that are not exempt due to the operation of this exclusion are:
- a GPRV that regularly travels to an accommodation complex to drop off employees at a change of shift or at meal times to enable employees to attend the mess; and
 - a GPRV that is regularly parked overnight in a carpark used in connection with an accommodation complex.

The above constitute a use of the vehicle in an excluded area and the GPRV is caught by the exclusion in subitem 1(3)(b).

- 4.50 The situation would be different if, for example, a vehicle was taken into such an excluded area because of an isolated emergency or for maintenance or repair work to be carried out on the vehicle where the repair facilities are located in the township. This would not deny exemption for the GPRV.

Chapter 5: What conditions must be met for exemption to apply to GPRVs under Item 28?

- 5.1 Item 28²² is not an Item that relates to a specific industry. Its purpose is to provide exemption for certain goods mainly used in activities of storing, handling, transporting or dispatching qualifying goods.
- 5.2 **Appendix 4** is a flow chart that outlines the steps to determine whether exemption applies to a GPRV under Item 28. The first condition to be satisfied by a GPRV under this Item is that it must be for use mainly in carrying out one or more of the following activities:
- storing qualifying goods of the exemption user;
 - handling qualifying goods of the exemption user;
 - transporting qualifying goods of the exemption user;
 - dispatching qualifying goods of the exemption user; and/or
 - various ancillary activities related to those storage, handling, transport or dispatch activities.

What are 'qualifying goods'?

- 5.3 The term 'qualifying goods' is defined in the legislation.²³ Qualifying goods include the manufactured goods of exemption users, goods derived from primary production activities or mining or prospecting operations carried out by exemption users, raw materials, work in progress or goods covered by the business inputs Items listed in the definition of 'qualifying goods' in **Appendix 1**.
- 5.4 Clearly, the transport of most inputs and outputs of the mining process is covered by Item 28, for example, the transport of ore or transport of equipment used in drilling operations.
- 5.5 The use of a GPRV mainly to transport people does not qualify it for exemption under Item 28, other than in limited circumstances as an ancillary activity - see paragraphs 5.12 to 5.14.

²² See Item 28 at Appendix 1.

²³ See 'Definitions' at Appendix 1.

Main use

- 5.6 When a vehicle is used (or is for use) for more than one purpose, it is a question of fact and degree as to what is its main use. 'Mainly' means 'to the extent of more than 50 per cent'.²⁴ However, such a test does not provide an easy answer in this context, as more than one usage of a vehicle may occur at the same time. For example, a vehicle may be used to transport surveyors to sites and to transport the surveyors' equipment. The time spent by the vehicle in each activity of transporting people and equipment may be equal, if they are all transported on each trip. In cases of multiple uses, the decision as to which is the main use must be determined by reference to the purpose of that particular activity.
- 5.7 In the above example, the facts may show that the main purpose is to transport the people and that the transport of the equipment is merely ancillary to that purpose. On the other hand, in a case where a vehicle is used primarily to collect samples from various sites and deliver them to a laboratory, it may be that the main purpose is the transport of qualifying goods and the fact that the driver and occasional passengers are also transported is incidental to that main purpose.
- 5.8 Determining the use of the vehicle involves an exercise in characterisation. The real character of the activity being undertaken needs to be established in order to determine whether exemption might apply.

Premises controlled

- 5.9 Under subitem 28(3)(b) a GPRV used mainly as described above is not exempt unless it is for use exclusively:
- within premises controlled by the exemption user (not including so much of those premises as is used, or for use, mainly in connection with the retail sale of goods at those premises to the general public); and/or
 - in going between such premises that are adjacent.
- 5.10 The requirements relating to control over premises are similar to those contained in Item 1. Reference should be made to paragraphs 4.11 and 4.20 of this Ruling. Item 28 does not require that the exemption user use the premises mainly in carrying out any particular activity, e.g., mining. The only condition is that the vehicle not be used on any premises or parts of premises used mainly in connection with the retail sale of goods at those premises to the general public. This restriction has little, if any, application in the mining industry.
- 5.11 Where a GPRV is used mainly for mining activities so as to be exempt under Item 1, use of that vehicle to any extent in premises for use in connection with a township, etc., would deny the exemption (see paragraphs 4.33 to 4.50 of this Ruling). As Item 28 does not contain a similar restriction, it needs to be determined whether the main

²⁴ See 'Definitions' at Appendix 1.

use of a vehicle used in such premises is use in carrying out mining activities within Item 1 or use in carrying out storage, handling, transport or dispatch activities within Item 28 (see paragraphs 5.2 to 5.5).

Ancillary activities

- 5.12 One of the ancillary activities covered under Item 28 is the transport of people within an eligible area to assist them in carrying out the higher-level activities (storing, handling, transporting or dispatching qualifying goods). The term 'eligible area' is defined as 'an area that is used, or for use, mainly in carrying out the higher-level activities'.²⁵ For example, where a truck is used to transport ore from a pit to a storage site, the tract of land over which the truck carries out that transportation function is an eligible area.
- 5.13 A GPRV is exempt from sales tax where it is used mainly to transport workers within a storage area in order to assist them in handling qualifying goods. In this case, the ancillary activity is the transporting of the workers and the eligible area is the storage area.
- 5.14 A GPRV used to transport people between the accommodation complex and the mine site is not exempt because 'eligible area' is not the same as 'premises'. The term 'eligible area' is more specific than premises as its definition refers to its use in narrowly defined activities. There may in fact be a number of potential 'eligible areas' within particular premises. For instance, on the one large mining lease (the premises) there may be a mine site, a storage site and an accommodation complex, all separated by a number of kilometres. The mine site, the storage site and the corridor between the two may each be distinct eligible areas depending on the context, but the accommodation complex is not an eligible area.

Chapter 6: Application of Item 38

- 6.1 Item 38²⁶ covers goods for use mainly in carrying out two or more activities covered by the business inputs exemption Items. It permits the use of the goods in each activity (countable activities) to be added together in order to satisfy the main use test. An activity is a countable activity where the goods for use in the activity qualify for exemption under a listed business input exemption Item if they are used mainly for that activity.

²⁵ Subsection 10(2) of the ST(E&C) Act.

²⁶ See Appendix 1 for the wording of the Item.

- 6.2 Goods for use in mixed activities only qualify for exemption if the goods for use mainly in the countable activity are covered by the exemption Item in which the countable activity is referred to. If the goods are excluded under the relevant Item (i.e., either because the goods were expressly excluded, or because of the operation of section 13 of the ST(E&C) Act) then that activity cannot be counted for the purpose of passing the main test in Item 38.
- 6.3 Where an exemption Item (e.g., Item 1) requires that goods be used at premises that are used mainly for carrying out activities covered by the Item, it is sufficient if the premises are used mainly in carrying out one or more of the countable activities. An activity is not be precluded from qualifying as a countable activity simply because the premises on which the activities are carried out are not used mainly for that activity.
- 6.4 A GPRV must meet all of the relevant conditions of each business inputs exemption Item relied on to establish that Item 38 applies
- 6.5 **Example:** A mining company wishes to buy a GPRV which will be used 45% in mining activities covered by Item 1 and 15% in manufacturing activities covered by Item 18. The remaining use of the vehicle will be for non-exempt activities. The vehicle will be used exclusively within premises that are owned by the mining company and the premises are used 40% for mining activities and 20% for manufacturing activities. The mining company is registered.

Result: The vehicle is not exempt under Item 1 because it is not used **mainly** (i.e., more than 50%) in mining activities covered by the Item and the premises are not used mainly for mining activities.

The vehicle is not exempt under Item 18 because it is not used **mainly** in manufacture-related activities covered by the Item and the premises are not used mainly for manufacture-related activities.

Subitem 38(1) allows the mining activities (45%) and the manufacture-related activities (15%) to be added together, so that the vehicle is mainly used for carrying out countable activities.

Subitem 38(3) allows the use of the premises for mining activities (40%) and manufacture-related activities (20%) to be added together so that the premises where the vehicle is used are mainly used for countable activities.

Because of the operation of subitem 38(3), the usage of the vehicle satisfies subitem 38(2) since, if the vehicle were to be used mainly in carrying out either of those countable activities, it would have been exempt under the relevant Item (i.e., either Item 1 or Item 18). The vehicle is exempt under Item 38.

Chapter 7: Exemptions for contractors under Item 36

- 7.1 Vehicles for use by contractors on behalf of one or more other persons ('the principals') in the mining industry may be exempt from sales tax under Item 36.²⁷ The conditions that apply under Items 1 or 28 if the activities were conducted by the principal, also apply under Item 36 in relation to the contractor.
- 7.2 There are three basic conditions that must be met:
- the vehicle must be **for use exclusively within premises controlled by the principal** or in going between adjacent premises, or a combination of both;
 - the vehicle must be for use **mainly** in carrying out contracted activities on behalf of the principal; and
 - the principal would have been entitled to buy the vehicle free of sales tax to personally carry out the activities.
- 7.3 Occasional, irregular or insignificant use outside premises is allowable (for example, for servicing the vehicle or in an emergency).
- 7.4 Contractors who provide remote storage and handling for a principal, are entitled to buy a vehicle free of sales tax for use **mainly** in carrying out that activity if the vehicle is used **exclusively within their storage/handling premises** or in going between their adjacent storage/handling premises.
- 7.5 Where contractors carry out contracts for a number of different principals and the premises are separated by public roads, exemption does not apply to the purchase of a road vehicle due to the travel required between the different principals' premises.

Commissioner of Taxation

19 August 1998

²⁷ See Appendix 1 for the wording of the Item.

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- accommodation complex
- adjacent premises
- controlled
- exclusive use
- general-purpose road vehicles
- mining or prospecting operations
- township

legislative references

- Sales Tax (Exemptions and Classifications) Act 1992, subsection 3(2), 11(1) sections 10, 12, 13 and Items 1, 18, 28, 36 and 38 in Schedule 1
- Sales Tax Assessment Act 1992 section 5

case references

- Collector of Customs v. Cliffs Robe River Iron Associates (1985) 7 FCR 271
- FC of T v. Chubb Australia Ltd 95 ATC 4186; (1995) 30 ATR 285
- DFC of T v. ICI Australia Operations Pty Ltd 87 ATC 4069; (1987) 18 ATR 313
- Diethlem Manufacturing Pty Ltd v. FC of T 93 ATC 4703; (1993) 26 ATR 465
- FC of T v. BHP Minerals Ltd 83 ATC 4407; (1983) 14 ATR 389
- Hygienic Lily Ltd v. DC of T 87 ATC 4327; (1987) 18 ATR 619
- ICI Australia Operations Pty Ltd v. DC of T (Vic) 87 ATC 5110; (1987) 19 ATR 647
- McNicol and Anor v. Pinch (1906) 2 KB 352
- Mayor of Wellington v. Mayor of Lower Hutt [1904] AC 773
- O R Cormack Pty Limited v. FC of T 92 ATC 4121; (1992) 23 ATR 151
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- Re: Western Australian Government Railways Commission (Westrail) and Collector of Customs (1994) 36 ALD 158
- Case 21/96 96 ATC 257; AAT Case 10,716 (1996) 32 ATR 1132

Appendix 1 Legislative provisions**Definitions**

*'controlled', in relation to premises, includes owned or leased.*²⁸

*'general-purpose road vehicle' means a road vehicle of a kind ordinarily used for the transport of persons or the transport or delivery of goods or other property.*²⁹

*'mainly' means to the extent of more than 50%.*³⁰

*'mining' includes mining petroleum or natural gas.*³¹

'mining or prospecting operations' means:

- (a) *mining operations;*
- (b) *quarrying operations;*
- (c) *exploring or prospecting for deposits that are to be recovered by mining or quarrying operations.*³²

'parts', in relation to road vehicles, includes:

- (a) *bodies for those road vehicles (including insulated bodies, tank-bodies, and other bodies designed for the transport or delivery of goods or other property of particular kinds);*
- (b) *underbody hoists, and other equipment or apparatus of a kind ordinarily fitted to road vehicles for use in connection with the transport or delivery of goods or other property by those road vehicles.*³³

qualifying goods, in relation to a person ('the exemption user'), means any of the following:

- (a) *goods the exemption user has manufactured;*
- (aa) *...*
- (ab) *...*
- (ac) *...*
- (b) *goods derived directly from either of the following activities that the exemption user carries out in Australia (whether or not the goods have been manufactured):*
 - (i) *a primary production activity (as defined by exemption Item 2);*
 - (ii) *mining or prospecting operations (as defined by exemption Item 1);*

²⁸ Subsection 3(2) of the ST(E&C) Act.

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² Subitem 1(4) of Schedule 1 to the ST(E&C) Act.

³³ Subsection 3(2) of the ST(E&C) Act.

- (c) *goods to which the exemption user has applied, is applying or will apply a process or treatment as described in paragraph (a), (b) or (c) of the definition of 'manufacture-related activity' in exemption Item 18;*
- (d) *goods that are used or for use by the exemption user in such a way that they are covered by exemption Item 1, 2, 18, 23, 28, 29, 30, 33, 34, 35 or 38.³⁴*

statutory period, in relation to goods, means the period that starts at the time when the goods are first applied to a person's own use in Australia and ends at the earliest of the following times:

- (a) *the end of 2 years after the time of that first application to own use;*
- (b) *the time when the goods are no longer reasonably capable of being used for the purpose for which goods of that kind are ordinarily used;*
- (c) *a time that the Commissioner considers to be appropriate in special circumstances.³⁵*

Exemption Items (Schedule 1 to the ST(E&C) Act)

ITEM 1: [Mining activities] [R]

- (1) *Goods for use by a person ('the exemption user') mainly in carrying out one or more of the following activities:*
 - (a) *mining or prospecting operations in the course of a business of carrying out mining or prospecting operations;*
 - (b) *restoring or rehabilitating a site on which the exemption user has carried out operations covered by paragraph (a):*
 - (i) *to a reasonable approximation of its condition before any mining or prospecting operations were carried out at the site; or*
 - (ii) *to a lesser condition;*
 - (c) *an activity that is ancillary (as defined by section 10) to one or more activities covered by paragraph (a) or (b);*
 - (d) *an activity that is ancillary (as defined by section 10) to one or more activities covered by paragraph (c).*
- (2) *Eligible raw materials and parts (as defined by section 11) in relation to activities covered by subitem (1).*
- (3) *This Item does not cover:*
 - (a) *generally-excluded property (as defined by section 12);*
 - (b) *a general-purpose road vehicle, unless it is for use exclusively:*

³⁴ Subsection 3(2) of the ST(E&C) Act.

³⁵ Section 5 of the Sales Tax Assessment Act 1992.

- (i) *within premises controlled by the exemption user and used by the exemption user mainly in carrying out one or more activities covered by subitem (1); or*
- (ii) *in going between adjacent premises covered by subparagraph (i); or*
- (iii) *for a combination of both;*

and is not for use, to any extent, in any part of premises described in subparagraph (i) that is used, or for use, mainly in connection with a township, accommodation complex or similar place;

- (c) *goods for use mainly in connection with administrative activities (other than activities covered by paragraph (1)(c) or (d).*

[See also section 13, which sometimes denies exemption if the exemption goods are for use in connection with property covered by subitem (3).]

- (4) *In this Item, '**mining or prospecting operations**' means:*
 - (a) *mining operations;*
 - (b) *quarrying operations;*
 - (c) *exploring or prospecting for deposits that are to be recovered by mining or quarrying operations.*

ITEM 28: [Storage, transport etc] [R]

- (1) *Goods for use by a person ('**the exemption user**') mainly in carrying out one or more of the following activities:*
 - (a) *storing, handling, transporting, or dispatching qualifying goods of the exemption user on premises that are controlled by the exemption user, except where the storing, handling, transporting or dispatching is on premises, or parts of premises, used mainly in connection with the retail sale of goods at those premises to the general public;*
 - (b) *an activity that is ancillary (as defined by section 10) to one or more activities covered by paragraph (a);*
 - (c) *an activity that is ancillary (as defined by section 10) to one or more activities covered by paragraph (b).*
- (2) *Eligible raw materials and parts (as defined by section 11) in relation to activities covered by subitem (1).*
- (3) *This Item does not cover:*
 - (a) *generally-excluded property (as defined by section 12);*
 - (b) *a general-purpose road vehicle, unless it is for use exclusively:*
 - (i) *within premises that are controlled by the exemption user (not including so much of those premises as is used, or for use, mainly in connection with the retail sale of goods at those premises to the general public); or*

- (ii) *in going between adjacent premises covered by subparagraph (i); or*
- (iii) *for a combination of both.*

[See also section 13, which sometimes denies exemption if the exemption goods are for use in connection with property covered by subitem (3).]

ITEM 36: [Subcontractors]

- (1) *Goods ('the exemption goods') for use by a person ('the exemption user') mainly in carrying out one or more activities described in subitem (1) of exemption Item 1, 2, 18, 23, 28, 29, 30, 33, 34 or 35, on behalf of one or more other persons ('the principals'). For this subitem to apply, either the condition in subitem (2) of this Item or the conditions in subitem (3) of this Item must be met for each activity ('countable activity') that is relied on to establish that this subitem applies.*
- (2) *If the exemption goods were for use by the principal concerned mainly in carrying out the countable activity at the place at which the activity is to be carried out by the exemption user, the exemption goods would (in relation to the principal) be covered by the Item in which the countable activity is referred to.*
- (3) *All the following conditions must be satisfied:*
 - (a) *the countable activity is to be carried out by the exemption user on premises controlled by the exemption user;*
 - (b) *the exemption goods are not for use by the exemption user mainly in connection with any business of the exemption user that involves selling goods (other than qualifying goods of the exemption user);*
 - (c) *the goods would be covered by exemption Item 28 (in relation to the principal concerned) if:*
 - (i) *the goods were for use by the principal mainly in carrying out the countable activity on the premises at which the activity is to be carried out by the exemption user; and*
 - (ii) *those premises were controlled by the principal.*
- (4) *Subitems (2) and (3) are to be applied on the assumption that the principal concerned is registered at all relevant times.*
- (5) *Eligible raw materials and parts (as defined by section 11) in relation to activities covered by subitem(1).*

[See also section 13, which sometimes denies exemption if the exemption goods are for use in connection with property that is expressly excluded from the relevant item.]

Item 38: [Mixed activities] [R]

- (1) *Goods ('the exemption goods') for use by a person ('the exemption user') mainly in carrying out 2 or more activities described in subitem (1) of exemption Item 1, 2, 18, 23, 28, 29, 30, 33, 34 or 35. For this subitem to apply, the condition in subitem (2) of this*

Item must be met for each activity ('countable activity') that is relied on to establish that this subitem applies.

- (2) *If the exemption goods were for use by the exemption user mainly in carrying out the countable activity, they would be covered by the Item in which the countable activity is referred to.*
- (3) *In applying the test in subitem (2), a reference in exemption Item 1, 2, 18, 23, 28, 29, 30, 33, 34 or 35 to premises used by the exemption user mainly in carrying out activities described in that Item is to be read as a reference to premises used by the exemption user mainly in carrying out one or more of the countable activities.*
- (4) *If none of the countable activities is in an exemption Item marked [R], then this Item has effect as if it were not marked [R].*
- (5) *Eligible raw materials and parts (as defined by section 11) in relation to activities covered by subitem (1).*

[See also section 13, which sometimes denies exemption if the exemption goods are for use in connection with property that is expressly excluded from the relevant Item.]

Section 10 - Activities that are ancillary to one or more higher-level activities

10(1) *[Ancillary activities of exemption user] For the purposes of Chapter 1, the following activities of a person ('the exemption user') are ancillary to one or more other activities ('the higher-level activities') carried out by the exemption user:*

- (a) *scheduling, sequencing, monitoring, controlling or costing the higher-level activities;*
- (b) *ordering, storing, handling, transporting, monitoring, controlling, costing, repairing or maintaining any of the following:*
 - (i) *goods/equipment used, or for use, mainly in carrying out the higher-level activities;*
 - (ii) *if each of the higher-level activities consists of applying a process or treatment to goods as described in paragraph (a) or (b) of the definition of 'manufacture-related activity' in exemption Item 18 - the goods to which that process or treatment is applied;*
 - (iia) *materials wholly or partly out of which wholesaler's-materials goods in relation to the exemption user are to be manufactured;*
 - (iii) *goods for use exclusively as raw materials in the on-site construction of goods/equipment for use mainly in carrying out the higher-level activities;*
 - (iv) *goods for use exclusively as parts for goods/equipment for use mainly in carrying out the higher-level activities;*

- (v) *goods for use exclusively as raw materials in repairing or maintaining goods/equipment for use mainly in carrying out the higher-level activities;*
- (c) *training people, or preparing materials for training people, if the training is mainly for the purpose of developing, improving or maintaining their skills in performing the higher-level activities;*
- (d) *an activity that is undertaken mainly for one or more of the following purposes:*
 - (i) *providing access to a building, or part of a building, that is used, or for use, mainly in carrying out the higher-level activities;*
 - (ii) *providing lighting for the purposes of carrying out the higher-level activities;*
 - (iii) *controlling temperature in an eligible area;*
 - (iv) *covering floors or windows in an eligible area;*
 - (v) *monitoring or controlling pollution that results from carrying out the higher-level activities;*
 - (vi) *disposing of waste products that result from carrying out the higher-level activities;*
 - (vii) *producing, supplying or regulating power (including electricity, gas, compressed air or hydraulic power) for use in carrying out the higher-level activities;*
 - (viii) *transporting people (otherwise than by air or sea), within an eligible area, in order to assist them to carry out the higher-level activities;*
 - (ix) *monitoring the weather for a purpose related to carrying out the higher-level activities;*
 - (x) *preventing accidents in an eligible area, where the accidents involve persons carrying out the higher-level activities;*
 - (xi) *treating injuries in an eligible area, where the injuries occur in an eligible area to persons carrying out the higher-level activities;*
 - (xii) *preventing people who are carrying out the higher-level activities from being injured while in an eligible area;*
 - (xiii) *preventing, detecting or extinguishing fires in an eligible area;*
 - (xiv) *cleaning or de-contaminating an eligible area;*
 - (x) *providing security for an eligible area;*
 - (xvi) *monitoring, supplying or regulating water for use mainly in carrying out the higher-level activities;*
 - (xvii) *providing communications for the purpose of carrying out the higher-level activities.*

10(2) *[Interpretation] In this section:*

'eligible area' means an area that is used, or for use, mainly in carrying out the higher-level activities;

'goods/equipment' means goods, or machinery, implements or apparatus.

Section 13 - Lower level operation of excluded property

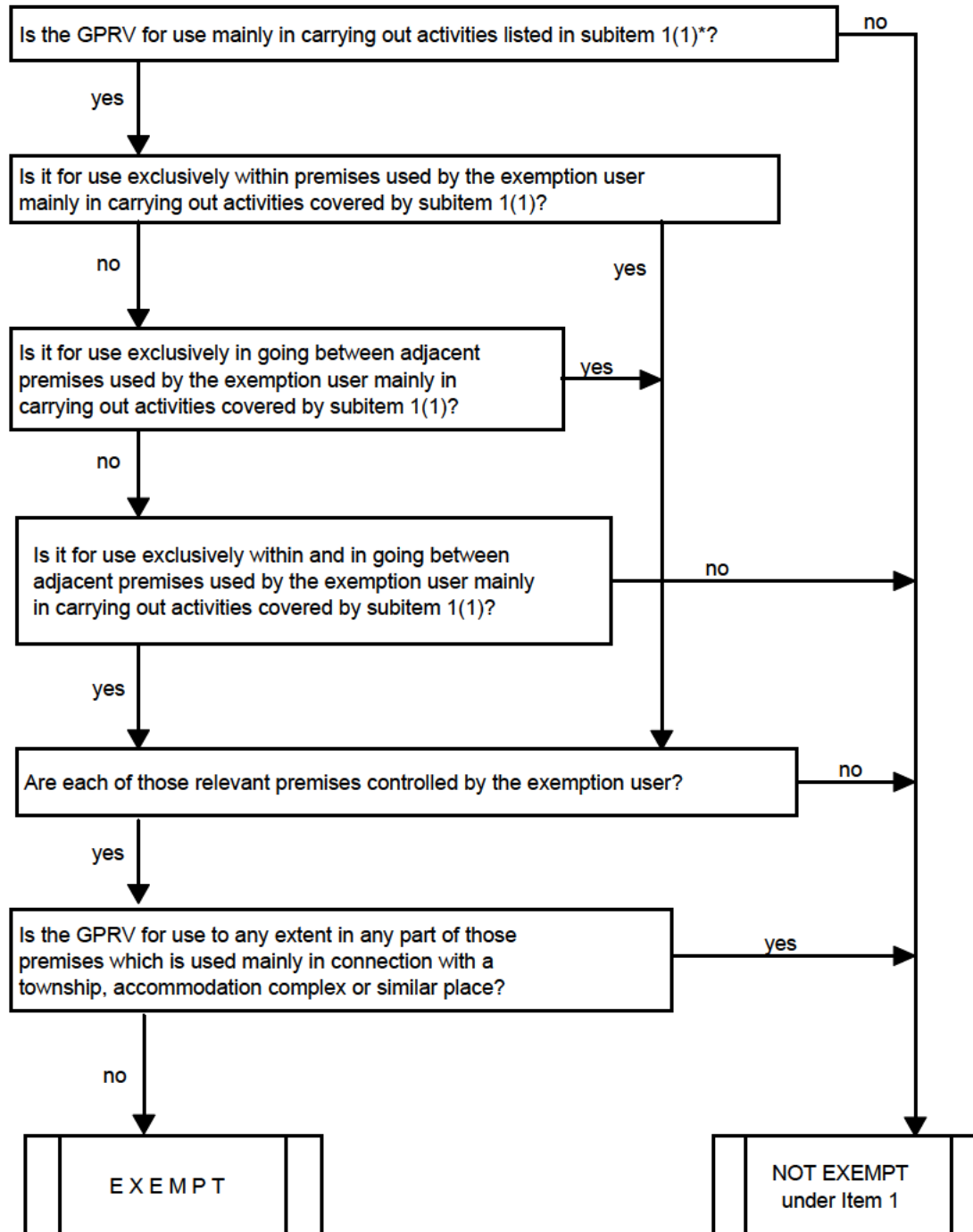
13(1) *[Application of certain exemption Items] In deciding whether exemption Item 1, 2, 18, 23, 28, 29, 30, 33, 34, 35, 36 or 38 applies, the exemption user cannot rely on:*

- (a) the use of the exemption goods, so far as the use relates directly to:*
 - (i) excluded property; or*
 - (ii) waste products resulting from the use of excluded property; or*
- (b) the use of other property so far as its use relates directly to:*
 - (i) excluded property; or*
 - (ii) waste products resulting from the use of excluded property.*

13(2) *['excluded property'] In this section:*

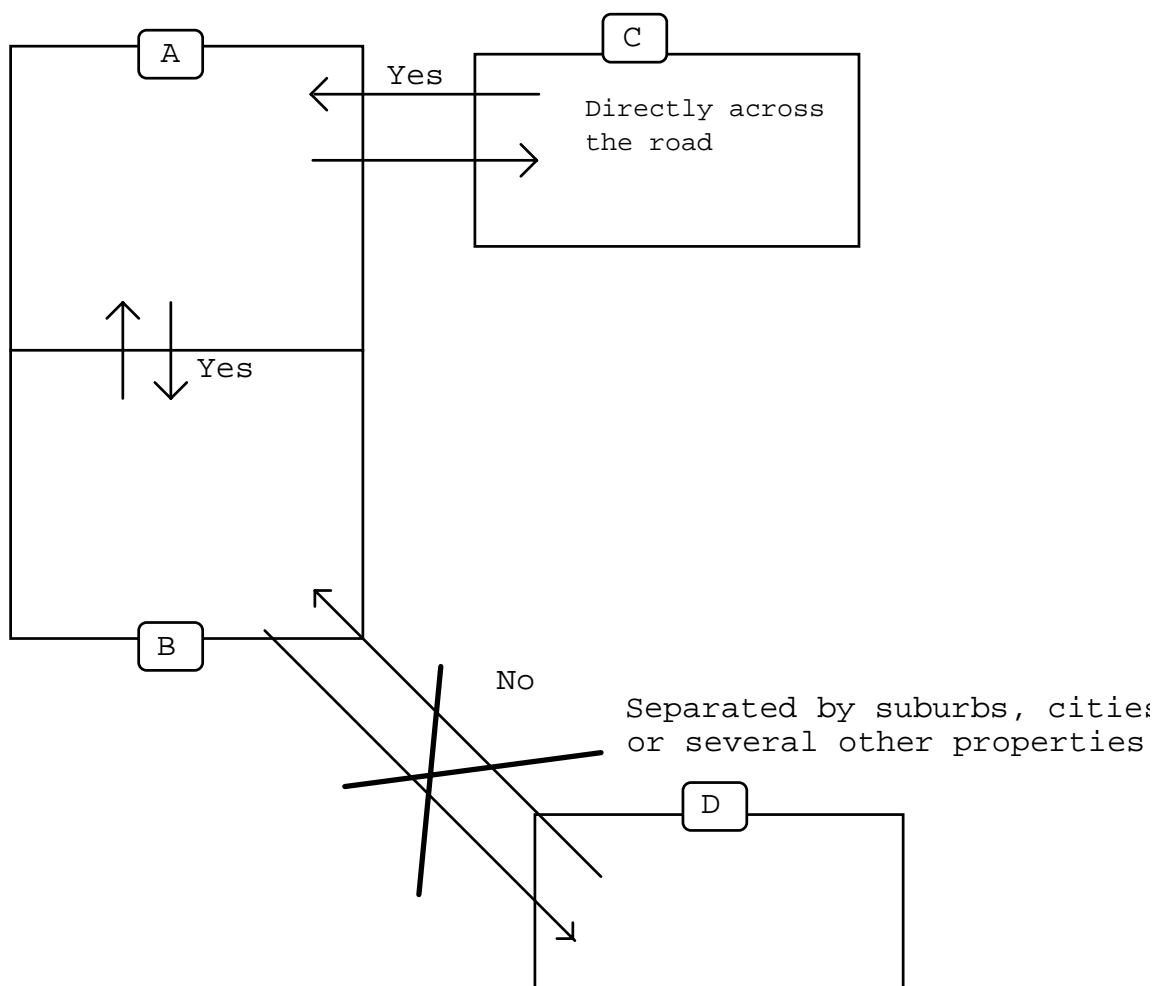
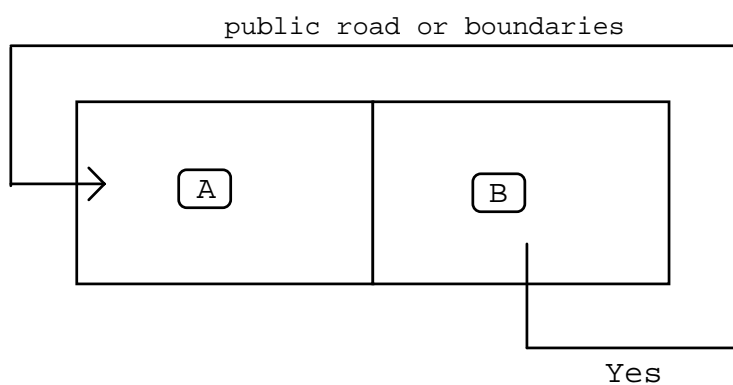
'excluded property' means property that is expressly excluded from the exemption Item concerned, but does not include:

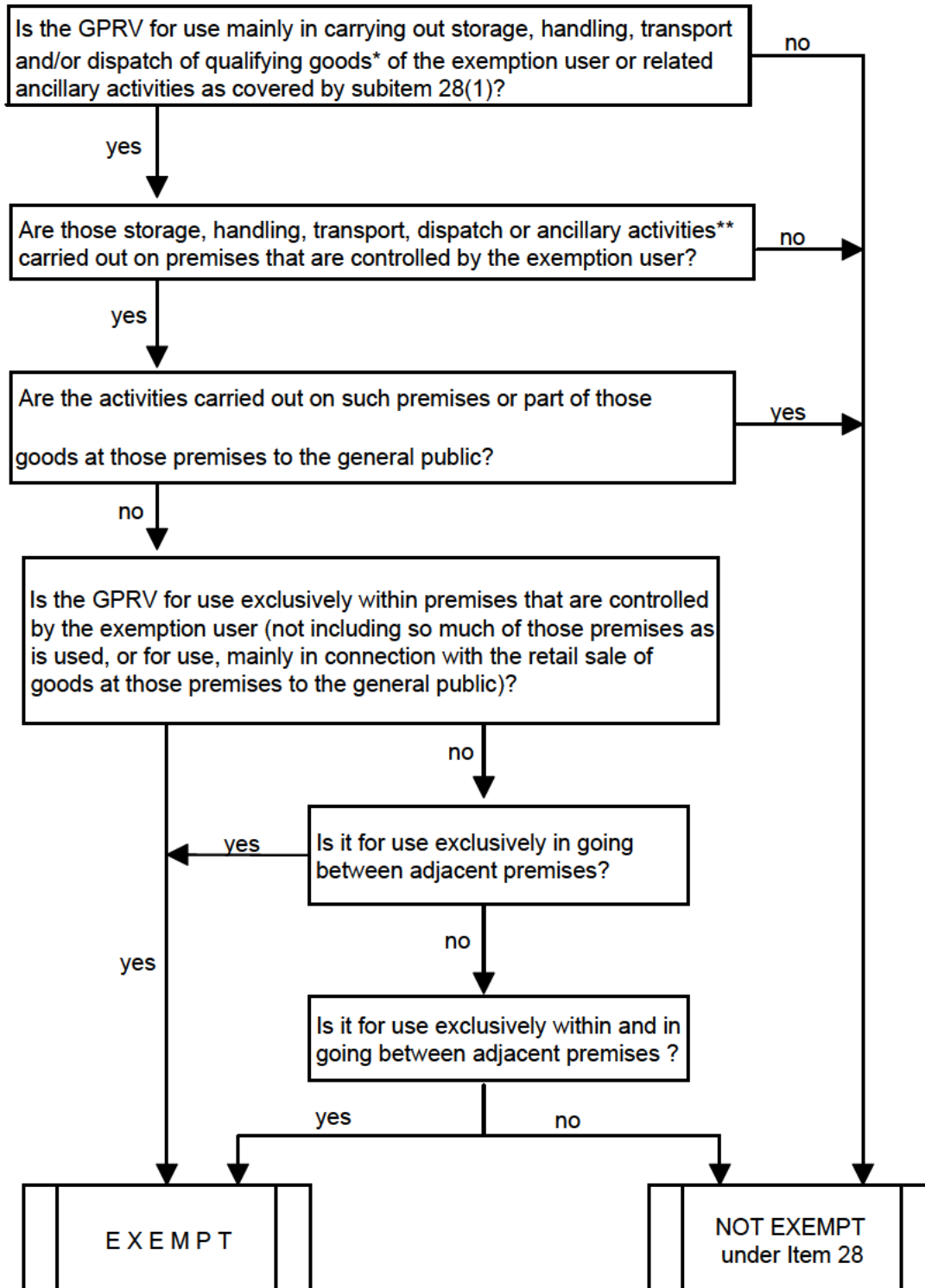
- (a) goods covered by exemption Item 3, 4, 5, 6, 8 or 17;*
- (b) goods that have been manufactured by the exemption user, but have not been applied to own use by the exemption user.*

Appendix 2 Item 1 Exemption for general-purpose road vehicles

* Subitem 1(1) includes certain:

- mining operations
- prospecting and exploration activities
- restoration or rehabilitation activities
- ancillary activities

Appendix 3 Examples of adjacencyExample 1Example 2

Appendix 4 Item 28 Exemption for general-purpose road vehicles

**"qualifying goods" is explained at paragraph 5.3 in the Ruling*

***"ancillary activities" is explained at paragraph 5.12 in the Ruling*