

# ***SST 4 - Sales Tax: how it applies to leases of goods***

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## Taxation Ruling

### Sales tax: how it applies to leases of goods

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*This document is a Ruling for the purposes of section 77 of the Sales Tax Assessment Act 1992. As a result, you may act upon the Ruling as if it had the force of law.*

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## Chapter 1: What this Ruling is about

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- 1.1 This Ruling explains how the lease provisions in the sales tax law apply. It provides guidance to persons who lease, hire, let or rent (described in the Ruling as *lease*) goods. <sup>1</sup>

### *Overall scheme of the lease provisions*

#### **Assessable dealings with assessable goods**

- 1.2 Sales tax is payable on an *assessable dealing* with goods if no exemption applies. A grant of a lease of goods is an *application to own use* (AOU) by the lessor. This is known as a *lease AOU* and is an *assessable dealing* if it satisfies the requirements of one of the AOU *assessable dealings* (ADs 3a, 3b, 3c, 13a and 13c) in Table 1 to Schedule 1 of the *Sales Tax Assessment Act 1992*. However, only *assessable goods* can be the subject of an *assessable dealing*. <sup>2</sup>
- 1.3 The first lease of *assessable goods* is an *assessable dealing* (and also the point at which the goods become *Australian-used goods* and no longer taxable) if the *lease AOU* satisfies the requirements of one of the AOU *assessable dealings* as explained above. A later lease of goods is generally not an *assessable dealing* as the goods are no longer *assessable goods*. <sup>3</sup>
- 1.4 The term *assessable goods* means *Australian goods* or *imported goods*, but does not include *Australian-used goods*. The term *Australian-used goods* (as far as is relevant) means goods that have been applied to a person's own use in Australia (whether the goods are *Australian goods* or *imported goods*). In simple terms, *Australian-used goods* refers to goods that have been used in Australia. However, goods that have been used overseas but not in Australia are *assessable goods*. <sup>4</sup>

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1. In this ruling, the term *sales tax law* refers to the *Sales Tax Assessment Act 1992* (STAA), the *Sales Tax (Exemptions and Classifications) Act 1992*, the *Sales Tax Amendment (Transitional Provisions) Act 1992*, the related *Imposition Acts and Regulations*, the various *Sales Tax (Deficit Reduction) Acts 1993* and incorporates the *Taxation Administration Act 1953*.

2. Refer to the definitions of *assessable dealing*, *goods*, *application to own use*, *lease AOU* and *assessable goods* in Sec 5, STAA. See also Table 1 (Assessable dealings) in Schedule 1 to the STAA. The term *goods* generally refers to any form of tangible personal property.

3. Refer to the definition of *Australian-used goods* in Sec 5, STAA.

4. Refer to the definitions of *Australian goods* and *imported goods* in Sec 5, STAA.

**Exemptions**

- 1.5 There are six exemptions that may apply to a *lease AOU* dealing:
- The goods are *always-exempt goods*.
  - The small business exemption applies.
  - The leased goods are intended for export by the lessee before use (see Chapter 5).
  - The lease agreement requires the lessor to export the goods before the goods are used (see Chapter 5).
  - The lease is an *eligible long-term lease* (see Chapter 6).
  - The lease is an *eligible short-term lease* and the *exempt percentage* is 100% (see Chapter 7). <sup>5</sup>

**Taxable value**

- 1.6 If the *lease AOU* is by the manufacturer of the goods, the taxable value, on which tax is payable, is the *notional wholesale selling price*, that is, the price (excluding sales tax) for which the lessor could reasonably have been expected to sell the goods by wholesale under an arm's length transaction.
- 1.7 If the *lease AOU* is by a lessor who obtained the goods under quote and:
- if the goods were purchased, the taxable value is the purchase price; or
  - if the goods were imported by the lessor, the taxable value is 120% of (customs value + customs duty).
- 1.8 The taxable value of the *lease AOU* is reduced if the goods are covered by an *eligible short-term lease* agreement and the *exempt percentage* under the agreement is less than 100%. <sup>6</sup>

**Registration**

- 1.9 The leasing of goods is not in itself a ground for registration. A lessor is only entitled to register for sales tax purposes if one of the grounds for registration are satisfied, for example, the manufacture of assessable goods in the course of carrying on a business. <sup>7</sup>

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5. Refer to the definitions of *always-exempt goods*, *eligible long-term lease* and *eligible short-term lease* in Sec 5, STAA. See also the exemptions provided by Secs 26, 29 and 32, STAA. Sec 15A, STAA explains the *eligible short-term lease* provisions. The small business exemption may apply to a lessor who leases goods of own manufacture. The exemption does not apply to goods obtained under quote.

6. Refer to *Taxation Ruling SST Ruling No 2* on the subject of taxable value.

7. Subsection 78(1), STAA lists the grounds for registration for sales tax purposes.

**Quotation**

- 1.10 Lessors who obtain goods that will be the subject of an *eligible long-term lease* or an *eligible short-term lease*, or subject to a lease where the goods will be exported before the goods are used, are able to obtain those goods tax-free under quote. In all other cases, lessors should obtain the goods tax paid and claim credits (where appropriate) in respect of the first *eligible long-term lease* or the first *eligible short-term lease* of the goods, or the lease of goods that are exported.

**Credits**

- 1.11 There is a credit for tax borne on goods that are the subject of:
- an *eligible long-term lease*;
  - an *eligible short-term lease*; or
  - are exported before use.

**Post-trial sale or post-trial lease**

- 1.12 There is also a credit for tax borne on goods that are the subject of either a post-trial sale or a post-trial lease (see Chapter 8).

**Some lessors may not need to read this Ruling any further**

- 1.13 A lessor who purchases or imports goods and leases the goods to lessees who do not use the goods to satisfy an exemption provision should purchase the goods at a price that includes sales tax (purchased goods) or pay sales tax to Customs at the time of local entry (imported goods). It may be unnecessary for these lessors to read this Ruling any further.

*Language and footnotes in this Ruling*

- 1.14 The Ruling is expressed in non-technical language wherever possible. Footnotes refer to definitions of terms used in this Ruling, court decisions and other authorities or give details of the legislation that applies.

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## Chapter 2: Date of effect

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- 2.1 The date of effect of this Ruling is 2 August 1995. This Ruling replaces any previous public or private rulings if the rulings are inconsistent with this Ruling. However, any such rulings will continue to operate for a period of three months following the date of issue of this Ruling, that is until 2 November 1995.

### *Effect of Ruling on existing eligible short-term lease agreements*

- 2.2 Most existing *eligible short-term lease* agreements are consistent with the principles set out in the sales tax law and this Ruling. If such an agreement incorporates a termination date, the agreement will continue to operate until the termination date. If an agreement contains a clause which covers the effect that public or private rulings issued after the date of commencement of the agreement have on the agreement, the clause will operate as expressed in the agreement. <sup>8</sup>
- 2.3 If the agreement is inconsistent with the principles set out in the sales tax law and this Ruling and does not contain a clause relating to the effect of public and private rulings, this Ruling should be taken as notice that the agreement will terminate on the date stated in the agreement or on 2 November 1995, whichever is earlier. <sup>9</sup>
- 2.4 If the agreement is consistent with this Ruling, but does not contain a termination date, this Ruling should be taken as notice that the agreement will terminate on 30 June 1997.
- 2.5 A lessor who is unsure of the effect of this Ruling on the agreement, or a lessor whose agreement will be terminated may contact the Taxation Office for further advice.

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8. Many existing agreements contain clauses relating to provision for the impact of rulings from the Taxation Office on the agreement. See also paragraph 7.46 which explains the clauses generally found in agreements.

9. Refer to Chapter 7 for an explanation of the law relating to *eligible short-term lease* agreements. An agreement is not inconsistent with this Ruling merely because it does not contain all of the clauses mentioned in paragraph 7.46.

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## Chapter 3: What is a lease?

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### *Statutory definition of lease*

- 3.1 The term *lease* is defined to mean, in relation to goods, *a lease by the owner of the goods and includes the letting or hiring of the goods under a hire-purchase agreement*.<sup>10</sup>
- 3.2 The definition only refers to leases of goods. The definition ensures that the letting or hiring of goods under a hire-purchase agreement is treated the same as other leases. The definition also means that, to be a lease for sales tax purposes, the lease must be granted by the owner of the goods. A lease granted by a person other than the owner of the goods is not a *lease* for sales tax purposes, although it may be a lease in the ordinary meaning of the term. A sub-lease granted by a lessee, for example, is not a *lease* as defined in the legislation.<sup>11</sup> The reference to ownership in the definition restricts who can make an *eligible short-term lease* agreement with the Commissioner - see Chapter 7.

### *Ordinary meaning of lease*

- 3.3 The statutory definition of *lease* adds to the ordinary meaning of lease. A definition of lease is *a grant of the exclusive possession of property to last for a term of years or periodic tenancy, usually with the reservation of rent*.<sup>12</sup> In distinguishing between a lease and a licence, the High Court of Australia (Taylor J) in *Radaich v Smith* said *the problem may be solved by considering whether the right which is conferred is a right to the exclusive possession of the property in question*.<sup>13</sup> While these references refer to leases of land, the references raise the concept of *possession*.

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10. Refer to the definition of *lease* in Sec 5, STAA.

11. A lessee is not the legal nor beneficial owner of goods subject to the lease.

12. Refer to *Osborn's Concise Law Dictionary, Eighth Edition*. A lease, being a contract, must include the element of consideration.

13. Refer to *Radaich v Smith* (1959) 101 CLR 209 at 219-220.

*Lease, hire and bailment*

3.4 The following arrangements are *leases* for sales tax purposes providing the statutory definition of *lease* is satisfied and there is a transfer of possession of the goods:

- a lease of goods by the owner;
- a rental of goods by the owner
- a hire of goods by the owner including short-term hire;
- a letting of goods under a hire-purchase agreement; and
- a hire of goods under a hire-purchase agreement.

3.5 Both leases and hires belong to the law of *bailment*. A bailment occurs when one person is knowingly and willingly in possession of goods that belong to another. A lease or hire arises if the owner of the goods transfers possession of the goods to another person who retains the goods for personal (and usually exclusive) use. Although all bailments are not leases, the law of bailment is relevant in determining whether particular arrangements are leases. <sup>14</sup>

**Hire of machine and operator (*wet hire*) arrangements**

3.6 The situation often occurs where one person supplies to another person both goods (typically plant and equipment) and a person to operate those goods. It is common to refer to these types of arrangements as *wet hires*.

3.7 In many cases such arrangements are in the nature of a provision of services rather than a lease. A lease or bailment only arises if there is a transfer of possession (although not necessarily physical possession) of the goods to the hirer so that the hirer is able to exercise real control over the goods. <sup>15</sup>

3.8 Factors which indicate a hirer has control over the goods and thus the arrangement is a lease include:

- the operator of the goods is a servant of the hirer, that is, the operator operates under the direction of and on behalf of the hirer;
- the hirer directs the course of the task being undertaken, that is, the hirer determines what work the goods are to perform, where it is to work and the period of its operation;
- the hirer is liable for any negligence of the operator, and/or for damage caused while the goods are in use;

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14. This Ruling only provides a brief overview of the law of bailment and its impact on the leasing of goods. For further information see NE Palmer, *Bailment*, The Law Book Company Ltd (1991); JN Adams, *Commercial Hiring & Leasing*, Butterworths (1989); *FC of T v Brambles Holdings Ltd (1991)* 21 ATR 1429; 91 ATC 4285 and *Otto Australia Pty Ltd v FC of T (1991)* 21 ATR 1453; 91 ATC 4305.

15. See *Brambles Australia Ltd v Commissioner of Taxes (NT) (1993)* 26 ATR 587; 93 ATC 4888 and NE Palmer, *Bailment* at 470-493.

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- the hirer makes positive arrangements for the security of the goods while the goods are not in use;
- the hirer has the right to dictate what is to happen to the goods when not in use;
- the goods are used *by the hirer* rather than *for the hirer*; and
- the hirer has control over the use of the goods through a statutory provision, for example, an Act of Parliament or Council By-law.

3.9 While a written contract between the parties might indicate that the arrangement is a hire or lease, the understandings and conduct of the parties must support the contract.

3.10 None of the above factors is determinative in itself. A particular factor may not apply to an arrangement in question. Each case depends on its own facts. If a person is unsure whether a particular arrangement is a lease, that person should obtain a private ruling from the Taxation Office.<sup>16</sup>

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## Chapter 4: When is sales tax payable on leases of goods?

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4.1 The obligations or liabilities of a person who grants a lease of *assessable goods* depend on the circumstances surrounding the granting of the lease. The following paragraphs discuss some typical circumstances where a sales tax liability may arise as a result of granting a lease.

### *Typical lease circumstances*

#### **Goods purchased or imported and leased in taxable circumstances**

4.2 A lessor is not entitled to quote a *registration number* or *exemption declaration* at the time of purchase or importation of the goods if the lessor purchases or imports the goods to be leased in *taxable circumstances*.<sup>17</sup> Therefore unless the goods are

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<sup>16</sup> If a particular arrangement is not a lease, an exemption for the goods may apply under Items 36 or 37 in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

<sup>17</sup> The term *taxable circumstances* is used in this Ruling to refer to circumstances other than where:

- the *lease AOU* is exempt as the goods are exported;
- the *lease AOU* is exempt as the goods are subject to an *eligible long-term lease*;
- the *lease AOU* is exempt as the goods are subject to an *eligible short-term lease* where the exempt percentage is 100%; or
- the taxable value of the *lease AOU* can be reduced as a result of an *eligible short-term lease* agreement.

*always-exempt goods* the lessor purchases the goods at a price that includes sales tax (purchased goods) or pays sales tax to Customs at the time of local entry (imported goods).<sup>18</sup>

4.3 Occasionally a lessor may purchase or import goods tax-free by quoting a *registration number* or an *exemption declaration* and later lease those goods in *taxable circumstances*. For example, the lessor may have quoted because the leased goods were taken from a stock of goods that were acquired mainly to sell by wholesale, or the goods were taken from a stock of goods that were acquired tax-free because the lessor had permission from the Commissioner to quote when acquiring the goods.<sup>19</sup>

4.4 If tax-free goods acquired under quote are later leased in *taxable circumstances* and the goods are not *always-exempt goods*, the lessor must pay the tax on the goods to the Taxation Office. The liability to tax arises at the time of the *lease AOU*. The *taxable value*, on which tax is payable, is:

- if the goods were purchased - the purchase price; or
- if the goods were imported by the lessor - 120% of (customs value + customs duty).<sup>20</sup>

### **Goods manufactured and leased in taxable circumstances**

4.5 A lessor is required to pay tax on the taxable value of *assessable goods* to the Taxation Office if goods that have been manufactured by the lessor are leased in *taxable circumstances* and the goods are not *always-exempt goods* or the *small business exemption* does not apply.<sup>21</sup> The liability arises on the *lease AOU*. The *taxable value*, on which tax is payable, is the *notional wholesale selling price*.<sup>22</sup>

### **Lease of untaxed-goods**

4.6 A lessor is required to pay tax to the Taxation Office if *untaxed-goods* are leased in *taxable circumstances* and the goods are not *always-exempt goods*. The liability

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18. The liability to pay tax to Customs arises under Assessable dealing AD10 in Table 1, STAA. Refer to definitions of *quote*, *registration number*, *exemption declaration* and *always-exempt goods* in Sec 5, STAA. See also quoting grounds in Secs 82 and 83, STAA.

19. The Commissioner can permit a person to quote for goods under Sec 84, STAA in special circumstances, if quotation is not permitted by Secs 82 or 83, STAA.

20. The *lease AOU* is an *assessable dealing*, ie AD3c (Australian goods) or AD13c (imported goods). The liability to tax arises through the operation of Sec 16, STAA. Refer also to the definition of *assessable goods* and *taxable value* in Sec 5, STAA and *Taxation Ruling SST Ruling No 2* on the subject of *taxable value*.

21. The *small business exemption* is explained in Sec 29, STAA. See also Bulletin No 18 - *Small Business Exemption*.

22. The *lease AOU* is an *assessable dealing*, ie AD3b. The liability to tax arises through the operation of Sec 16, STAA. Refer also to the definitions of *assessable goods* and *taxable value* in Sec 5, STAA and *Taxation Ruling SST Ruling No 2* on the subject of *taxable value*.

arises on the *lease AOU*. The *taxable value*, on which tax is payable, is the *notional wholesale selling price*.<sup>23</sup>

### **Royalty-inclusive lease**

- 4.7 A lessor is required to pay tax on the taxable value of *assessable goods* to the Taxation Office if eligible royalty costs have been incurred by the lessor before the *lease AOU*, or could reasonably be expected to be incurred by the lessor after the time of the *lease AOU* and the goods are not *always-exempt goods*. The liability arises on the *lease AOU*.<sup>24</sup>

### **Goods covered by an eligible short-term lease agreement**

- 4.8 The taxable value of the *lease AOU* is reduced if goods which are purchased or imported under quote by the lessor, or are manufactured by the lessor, are covered by an *eligible short-term lease* agreement and the *exempt percentage* under that agreement is less than 100%. Chapter 7 explains the *eligible short-term lease* provisions.<sup>25</sup>

### **Associated goods used with leased goods**

- 4.9 If *associated goods* (being parts, accessories, fittings or attachments for leased goods or goods that become an integral part of leased goods) are acquired for use with goods that are leased in *taxable circumstances*, the lessor's obligations are as follows:
- If purchased - purchase at a price that includes tax, that is, the lessor should not quote;
  - If imported - pay tax to Customs; or
  - If manufactured - a tax liability arises on the *application to own use* of the *associated goods*. The tax should be paid by the lessor to the Taxation Office. The *taxable value*, on which tax is payable, is the *notional wholesale selling price*.<sup>26</sup>

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23. Sec 21, STAA explains when an untaxed-goods *application to own use* arises. The *lease AOU* is an *assessable dealing*, ie AD3a (Australian goods) or AD13a (imported goods). The liability to tax arises through the operation of Sec 16, STAA. Refer also to the definitions of *assessable goods* and *taxable value* in Sec 5, STAA and *Taxation Ruling SST Ruling No 2* on the subject of *taxable value*.

24. Secs 19 and 36, STAA explain the concept of a royalty-inclusive *application to own use*. Lessors who may be affected by the provisions relating to royalty-inclusive *application to own use* should obtain further information, including the *taxable value* to be used, from the Taxation Office. The *lease AOU* is an *assessable dealing*, ie AD3d (Australian goods) or AD13d (imported goods). The liability to tax arises through the operation of Sec 16, STAA. Refer also to the definitions of *assessable goods* and *taxable value* in Sec 5, STAA and *Taxation Ruling SST Ruling No 2* on the subject of *taxable value*.

25. Refer to the definition of *eligible short-term lease* in Sec 5, referring to Sec 15A, STAA.

26. Refer to subsection 15A(3), STAA which explains the meaning of *associated goods*. The *application to own use* is an *assessable dealing*, ie AD3b. The liability to tax arises through the operation of Sec 16, STAA. Refer also to the definitions of *assessable goods* and *taxable value* in Sec 5, STAA and *Taxation Ruling SST Ruling No 2* on the subject of *taxable value*.

- 4.10 A tax liability arises on the *application to own use* of the *associated goods* if the lessor has a tax-free stock of *associated goods*. The tax should be paid by the lessor to the Taxation Office.

### **Repair equipment for use with leased goods**

- 4.11 If goods (referred to in this Ruling as *repair equipment*) are for use by a lessor for repairing or maintaining other goods leased in *taxable circumstances*, the lessor's obligations are as follows:

- If purchased - purchase at a price that includes tax, that is, the lessor should not quote;
- If imported - pay tax to Customs; or
- If manufactured - a tax liability arises on the *application to own use* of the *repair equipment*. The tax should be paid by the lessor to the Taxation Office. The *taxable value*, on which tax is payable, is the *notional wholesale selling price*.<sup>27</sup>

- 4.12 A tax liability arises on the *application to own use* of the *repair equipment* if the lessor has tax-free *repair equipment*. The tax should be paid by the lessor to the Taxation Office.

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## **Chapter 5: Export of leased goods**

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- 5.1 Leases of goods intended for export are exempt if:
- the lessee intends to export the goods before using them; or
  - the lease agreement requires the lessor to export the goods before the goods are used by the lessee.<sup>28</sup>

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27. The *application to own use* is an *assessable dealing*, ie AD3b. The liability to tax arises through the operation of Sec 16, STAA. Refer also to the definitions of *assessable goods* and *taxable value* in Sec 5, STAA and Taxation Ruling *SST Ruling No 2* on the subject of taxable value.

28. The exemption is provided by Sec 32, STAA.

- 5.2 If the lessee intends to export the goods before using them, the lessee is required to give to the lessor evidence, in the form approved by the Commissioner, of the lessee's intention to export the goods. The evidence must be given at or before the time the lease is granted. The lessor must retain the evidence for at least five years. The approved form of evidence is at Attachment A on page 41. <sup>29</sup>
- 5.3 The lessor may quote a *registration number* (if registered) or an *exemption declaration* in the form of ED4 or ED4P (if not registered) to the lessor's supplier or Customs to obtain the goods tax-free if the lessor acquires the goods with the intention of leasing the goods in circumstances where the exemption applies. <sup>30</sup>
- 5.4 The lessor may claim a credit of the tax borne if the lessor has *borne tax* on goods leased in circumstances where the exemption applies. The credit is claimed under credit ground CR19 directly from the Taxation Office. <sup>31</sup>
- 5.5 Tax is payable on the exported goods if the goods are treated as exempt or subject to the credit and then brought back to Australia. Even though the goods were previously leased and became *Australian-used goods*, the law deems the goods not to be *Australian-used goods*. Therefore the goods are treated the same way as any other goods that are imported and are not *Australian-used goods*. <sup>32</sup>

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## Chapter 6: Eligible long-term lease

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- 6.1 A *lease AOU of assessable goods* is exempt if goods that have been purchased, imported or manufactured by the lessor are leased in circumstances that satisfy the definition of *eligible long-term lease*.
- 6.2 A lease is an *eligible long-term lease* if it meets all of the following conditions:
- the term of the lease is at least as long as the statutory period;

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29. See Sec 127, STAA which explains the requirement to keep records.

30. See Secs 82(1)(g) and 83(1)(c) STAA, see also Bulletin No 13 - *Buying goods free of sales tax*.

31. Refer to definition of *borne tax* in Secs 5 and 11, STAA. See also Table 3 to STAA, also Part 4 (Secs 51-60) of STAA.

32. See Sec 10, STAA.

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- at or before the time of the grant of the lease, the lessor has been given evidence, in a form approved by the Commissioner, of the intention of the lessee or a sub-lessee to use the goods, during the whole of the statutory period, so as to satisfy an exemption Item; and
  - no part of any tax borne by the lessor on the goods before the grant has been passed on by the lessor to any person.<sup>33</sup>
- 6.3 The evidence of the intention of a lessee or sub-lessee to use the goods in the required manner may be in the form set out in Attachment B on page 42. Alternatively, the quotation of the lessee's or sub-lessee's *registration number* (if registered) or an *exemption declaration* (if not registered) is acceptable evidence of intention. The evidence must be given at or before the time the lease is granted and may be given at the time of signing the lease agreement. The lessor must retain the evidence for at least five years.<sup>34</sup>
- 6.4 The lessor may quote a *registration number* (if registered) or an *exemption declaration* in the form of ED4 or ED4P (if not registered) to the lessor's supplier or Customs if the lessor acquires the goods with the intention of leasing the goods under an *eligible long-term lease*.<sup>35</sup>
- 6.5 The lessor may claim a credit of the tax borne if the lessor has *borne tax* on goods leased under an *eligible long-term lease*. The credit is claimed under credit ground CR18 directly from the Taxation Office.<sup>36</sup>

### **Exemption for associated goods**

- 6.6 An *application to own use* of *associated goods* is exempt from tax if all of the following conditions are met:
- there is an *eligible long-term lease* of other goods;
  - the *associated goods* are for use by the lessor exclusively:

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33. Refer to definition of *eligible long-term lease* in Sec 5, STAA. The term *statutory period* refers to two years, the effective life of the goods or a period specified by the Commissioner (for example 40,000 km of running for certain types of motor vehicles) - refer to the definition of *statutory period* in Sec 5, STAA. Where there are a number of immediate sub-leases, it is the use of the ultimate lessee which determines whether the sub-lessee uses the goods during the whole of the statutory period so as to satisfy an exemption Item.

34. Evidence in the form of a quotation is acceptable as evidence only when it is in the form that would be approved by the Commissioner under Sec 86 STAA if it was a *quote*. It is stressed that the evidence is not a *quote* for the purposes of the sales tax law. See also Bulletin No 13 - *Buying goods free of sales tax*. In relation to the retention of evidence see Sec 127, STAA.

35. See Secs 82(1)(g) and 83(1)(c), STAA, see also Bulletin No 13 - *Buying goods free of sales tax*.

36. Refer to definition of *borne tax* in Secs 5 and 11, STAA. See also Table 3 to STAA, also Part 4 (Secs 51-60) of STAA.

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- (i) as parts, accessories, fittings or attachments for the other goods; or
- (ii) so as to become an integral part of the other goods; and

- if that use were instead by the lessee or the sub-lessee mentioned in paragraph (b) of the definition of "*eligible long-term lease*" in section 5 of the Assessment Act, it would satisfy the exemption Item mentioned in that paragraph. <sup>37</sup>

6.7 The exemption applies to goods for use *exclusively* by the lessor as parts, accessories, fittings or attachments for, or so as to become an integral part of, other goods, which are subject to an *eligible long-term lease*. It is a requirement that the lessee or sub-lessee would have been entitled to quote for the purchase of the parts or materials in reliance of one or more exemption Items if the lessee or sub-lessee had purchased the parts or materials for use in the same manner as the lessor.

6.8 *Associated goods* include goods which become an integral part of the other goods, that is, goods which belong as part of the whole unit and are a component or constituent part of the unit which is required for the unit to operate. To become an integral part, the goods must become a permanent part of the whole unit. Examples of goods that become integral parts of other goods and are thus *associated goods* include paint, lubricants, oils and greases. However, detergents and other cleaners do not generally become an integral part of other goods.

#### **Exemption for repair equipment**

6.9 An *application to own use of repair equipment* is exempt from tax if all of the following conditions are met:

- there is an *eligible long-term lease* of other goods;
- the *repair equipment* is for use by the lessor exclusively as equipment for repairing or maintaining the other goods; and
- if that use were instead by the lessee or the sub-lessee mentioned in paragraph (b) of the definition of "*eligible long-term lease*" in section 5 of the Assessment Act, it would satisfy one or more of exemption Items 1, 2, 18, 23, 28, 29, 30, 33, 34, 35, 36 and 38. <sup>38</sup>

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37. Refer to Item 195(2) in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

38. Refer to Item 195(3) in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

- 6.10 The exemption applies to goods for use *exclusively* by the lessor as equipment for repairing or maintaining goods leased as *business inputs* under an *eligible long-term lease*.<sup>39</sup>

**How is exemption obtained for associated goods and repair equipment?**

- 6.11 The lessor may quote a *registration number* (if registered) or an *exemption declaration* in the form of ED2 or ED2P (if not registered) to the lessor's supplier or Customs if the lessor acquires the goods with the intention of using the goods in circumstances where the exemption applies.<sup>40</sup>
- 6.12 If the lessor has borne tax on goods used in circumstances where the exemption applies, the lessor may only claim a credit of the tax borne from the Taxation Office under credit ground CR2 if the lessor is registered. If the lessor is not registered, there is no provision in the law to claim a credit.<sup>41</sup>

*Associated goods and repair equipment for Australian-used goods*

- 6.13 The exemption for *associated goods* and *repair equipment* applies regardless of whether the goods that are subject to the *eligible long-term lease* were *assessable goods* or *Australian-used goods* immediately before the granting of the lease. However, exemption only applies while the goods are being leased. Exemption does not apply to *associated goods* and *repair equipment* for use with goods that are being repaired or refurbished before the granting of a lease. It should be noted that one of the conditions of an *eligible long-term lease* is that the term of the lease must be at least as long as the statutory period.

*Replacement of goods*

- 6.14 Often goods which are subject to an *eligible long-term lease* are replaced during the term of the lease so that repair or maintenance may be carried out. As the exemption for an *eligible long-term lease* of goods is determined when the lease is granted, the *lease AOU* remains exempt even if the original goods are replaced before the end of the statutory period.

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39. *Business input* exemption Items are Items 1, 2, 18, 23, 28, 29, 30, 33, 34, 35, 36 and 38 in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

40. See Secs 82(1)(f) and 83(1)(a), STAA, see also Bulletin No 13 - *Buying goods free of sales tax*.

41. Refer to definition of *borne tax* in Secs 5 and 11, STAA. See also Table 3 to STAA, also Part 4 (Secs 51-60) of STAA. Note in particular Credit Ground CR22 does not apply. *Taxation Laws Amendment Bill (No 2) 1995* introduces credit ground CR2A. If the Bill receives Royal Assent a lessor who is not registered will be able to claim a credit from the Taxation Office.

- 6.15 As to the replacement goods, if the goods are *assessable goods*, the lease of the replacement goods is an *eligible long-term lease* if paragraphs (a), (b) and (c) of the definition are satisfied. In relation to the replacement goods, the statutory period commences from the date of replacement.
- 6.16 If the replacement goods are *assessable goods* and are leased to the lessee or sub-lessee for a period that is less than the statutory period, for example, for the remainder of the original lease, and if the remaining period is less than the statutory period, the *eligible long-term lease* provisions do not apply to the replacement goods. However, the *eligible short-term lease* provisions may apply.<sup>42</sup>

### *Leases and novation agreements*

- 6.17 A typical arrangement involving leases and novation agreements includes:
- a lease from a finance institution to an employee;
  - a sub-lease from the employee to the employer (who may be entitled to sales tax exemption); and
  - a deed of novation between all three parties under which the employer is responsible for the lease payments until either the term of the lease is completed or the employee's employment with the employer is terminated.

Goods leased under these types of arrangements include motor vehicles.

- 6.18 The lease arrangement may be an *eligible long-term lease* if:
- the term of the lease is at least the length of the statutory period; and
  - the employer is entitled to exemption from sales tax on goods for the employer's use.
- 6.19 Generally, the Commissioner considers these types of arrangements not to be *eligible long-term leases* because novation agreements typically expire at the earlier of the date the lease between the finance institution and the employee expires or the date the employee's employment terminates. This indicates that the intention of the employer is to use the goods for the lesser of the statutory period or the period of the employee's employment (which may be less than the statutory period) and accordingly the employer cannot form an intention to use the goods during the whole of the statutory period.

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42. Refer to Chapter 7 for an explanation of the *eligible short-term lease* provisions.

- 6.20 Furthermore, on the basis of the arrangements examined by the Commissioner to date, it is unlikely that the employer will use the goods during the term of the sub-lease so as to satisfy an exemption Item for any of the following reasons:
- The arrangements are characterised as a remuneration agreement between the employer and employee, often involving salary sacrifice. Viewed in totality, the arrangements enable an employee, as part of an overall remuneration package, to obtain personal use of goods at reduced prices. Use, if any, by the employer is incidental.
  - There is no transfer of possession of the goods to the employer. Even though the novation agreement may contain a clause such as *the employer has the right to exclusive possession of the goods*, effective control over the goods remains with the employee. This again indicates that use by the employer is not substantial.
  - Use by the employer is only acceptable for the purpose of exemption if it is sufficiently substantial in extent and time to regard the use as giving that character to the goods. Typically, the use of the goods by the employee is for non-employment related purposes, for example, travel to and from work or use by a spouse, and only incidentally for carrying out tasks relating to the employee's employment. There is not sufficient use by the employer to characterise the goods as being for use by the employer.
- 6.21 However, if a person considers that a particular arrangement does satisfy the requirements for an *eligible long-term lease* the person should obtain a ruling from the Taxation Office.

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## **Chapter 7: Eligible short-term lease**

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- 7.1 A lease of goods is an *eligible short-term lease* if the goods are covered by an agreement under subsection 15A(2) of the *Sales Tax Assessment Act 1992*.
- 7.2 A *lease AOU* is exempt if goods that are purchased, imported or manufactured by the lessor are covered by an *eligible short-term lease* agreement and the *exempt percentage* under that agreement is 100%. Alternatively, if the *exempt percentage* is

less than 100%, the taxable value of the *lease AOU* is reduced or the lessor may claim a credit.

- 7.3 By subsection 15A(2), the Commissioner and a person (*'the lessor'*) who grants leases of goods in the course of a business may agree on a percentage (other than nil) as the *exempt percentage* in relation to goods of a particular kind. The percentage agreed on must be the percentage of the statutory period during which it is agreed to be likely that the goods will be used by the lessor for lease (other than *eligible long-term lease*) to persons who, or whose sub-lessees, intend to use the goods during the whole of the term of the lease or sub-lease so as to satisfy one or more exemption Items.
- 7.4 By subsection 15A(3), the Commissioner and the lessor may agree on a percentage (other than nil) as the *exempt percentage* in relation to goods (*'the associated goods'*) of a particular kind that are for use by the lessor exclusively:
- as parts, accessories, fittings or attachments for goods that are covered by an agreement with the lessor under subsection 15A(2); or
  - so as to become an integral part of goods that are covered by such an agreement.
- 7.5 The percentage agreed on must be the percentage of the statutory period during which is agreed to be likely that the use of the *associated goods* as mentioned in the above dot points will satisfy one or more exemption Items.
- 7.6 By subsection 15A(4), the Commissioner and the lessor may, subject to subsection 15A(5), agree on a percentage as the *exempt percentage* in relation to goods of a particular kind that are for use by the lessor exclusively for repairing or maintaining other goods that are:
- covered by an agreement with the lessor under subsection 15A(2); and
  - for use so as to satisfy one or more exemption Items 1, 2, 18, 23, 28, 29, 30, 33, 34, 35, 36 and 38.
- 7.7 The percentage agreed on must be the percentage of the statutory period during which it is agreed to be likely that the other goods will satisfy the requirements as outlined in the above dot points.
- 7.8 Due to subsection 15A(5), the Commissioner and the lessor must not make an agreement under subsection 15A(4) unless the percentage to be specified is greater than 50%.

- 7.9 By subsection 15A(6), an agreement under any of the subsections in section 15A may include conditions that should be complied with for the agreement to have effect.

### *Overview of the eligible short-term lease provisions*

- 7.10 Subsection 15A(2) allows the Commissioner to enter into an agreement with a person (referred to as '*the lessor*') who grants leases of goods in the course of a business. It is not necessary that the lessor is carrying on a business of leasing goods. The agreement relates to goods of a particular kind and may relate to more than one particular class of goods which are leased by the lessor.
- 7.11 A lease of goods is an *eligible short-term lease* if the goods are of a particular kind covered by such an agreement. The key objective of the agreement is to establish a percentage (referred to as the *exempt percentage*) which is the percentage of the statutory period during which it is agreed that it is likely that goods of that particular kind will be leased (or sub-leased) in *exempt circumstances*. In this context *exempt circumstances* means circumstances in which the lessee or sub-lessee would have been entitled to quote for the purchase in reliance on one or more exemption Items if the lessee or sub-lessee had purchased the goods instead of leasing them. The *exempt percentage* for any particular class of goods may be up to, and including, 100%.
- 7.12 The agreement will usually take into account past leasing patterns in order to determine the percentage of the statutory period during which it is agreed to be likely that those goods will be leased in exempt circumstances. The Commissioner and the lessor may agree on a method of measuring exempt use which will accurately establish likely percentages of exempt use in the future. The appropriate method may vary depending on the character of the particular goods concerned.
- 7.13 Any likely *eligible long-term leases* cannot be taken into account in determining the *exempt percentage* for short-term leases of any particular class of goods. This is to prevent *exempt percentages* from being distorted by possible *eligible long-term leases* for which exemption is available separately - see Chapter 6.
- 7.14 Sub-leases of the goods may be taken into account in determining the *exempt percentage* for a particular class of goods. <sup>43</sup>
- 7.15 The Commissioner may also require that patterns of exempt usage be surveyed at specified time intervals, for example, quarterly or yearly, and that the *exempt*

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43. Where there are a number of immediate sub-leases, it is the use of the ultimate lessee which determines whether the sub-lessee uses the goods during the whole of the term of the sub-lease so as to satisfy an exemption Item.

*percentage* specified in the agreement be reviewed at those times. The regularity of the reviews is determined by the history of the lessor's business. A fledgling leasing business may be required to review its emerging patterns of exempt usage more frequently than a long-established leasing operation.

### *How is it the exempt percentage calculated?*

#### **Goods where there is a leasing history**

- 7.16 To calculate an *exempt percentage* for goods of a particular kind that the lessor has previously leased, the lessor selects a period of leasing history that is likely to be representative of leasing patterns in the statutory period. The period selected should take into account seasonal variations.
- 7.17 The lessor examines all leases of the goods in the selected period. If it is not practicable to examine all leases, for example if there are a large number of leases in the selected period, a sample of the leases may be examined. A lease should be treated as an *exempt lease* if the goods were leased to an exempt user and a lease should be treated as a *taxable lease* if the goods were leased to a taxable user. <sup>44</sup>
- 7.18 A time basis (based on number of hours, days etc goods are leased), a unit basis (based on quantity of units leased) or a revenue basis (based on dollar revenue from leasing the goods) may be used. A unit basis should only be used if it is not practicable to use either of the other methods - see also paragraph 7.26. <sup>45</sup>
- 7.19 The *exempt percentage* is the total of days/units/dollars relating to *exempt leases* (other than *eligible long-term leases*) divided by the total days/units/dollars relating to all leases (other than *eligible long-term leases*) in the selected period expressed as a percentage. If the lessor has a reasonable expectation that future lease patterns will not be similar to previous lease patterns, the percentage may be adjusted. <sup>46</sup>
- 7.20 The following examples illustrate how to calculate the *exempt percentage*:

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44. There are a number of sampling techniques that may be used. It is beyond the scope of this Ruling to examine the various techniques. If a lessor is unsure as to whether a particular technique is acceptable, a ruling may be obtained from the Taxation Office. See paragraphs 7.30 - 7.33 for a discussion regarding knowing whether the lessee is using the goods during the whole of the term of the lease or sub-lease to satisfy one or more exemption Items.

45. Refer to subsection 15A(2), STAA and paragraph 4.15 of the Supplementary Explanatory Memorandum to the *Sales Tax Assessment Bill 1992*.

46. See also the comments in paragraphs 7.27 - 7.28.

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*Example 1*

A lessor examines leases of forklifts in a representative period. The following leases were granted:

	Exempt Days	Taxable Days	Total Days
Forklift A			
Lease 1	30	0	30
Lease 2	0	40	40
Lease 3	30	0	30
Forklift B			
Lease 4	0	20	20
Lease 5	0	30	30
Lease 6	0	50	50
Forklift C			
Lease 7	80	0	80
Lease 8	10	0	10
Lease 9	10	0	10
TOTALS	160	140	300

On the basis of this data, the *exempt percentage* is  $160/300 = 53\%$ .

*Example 2*

A lessor examines leases of generators in a representative period. The following leases were granted:

	Exempt Revenue (\$)	Taxable Revenue (\$)	Total Revenue (\$)
Lessee A			
Lease 1	150	0	150
Lease 2	500	0	500

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## Lessee B

Lease 3	0	70	70
Lease 4	0	200	200
Lease 5	0	80	80
Lease 6	0	150	150

## Lessee C

Lease 7	200	0	200
Lease 8	200	0	200
Lease 9	0	100	100
TOTALS	1050	600	1650

On the basis of this data, the *exempt percentage* is  $1050/1650 = 64\%$ .

- 7.21 For certain goods, it may not be possible to examine all leases of the goods. This situation typically arises for leases of goods such as pallets. In these circumstances, the *exempt percentage* is calculated by examining the use patterns of the lessees. If it is not practicable to examine the use patterns of all lessees, a sample of the use patterns of lessees may be examined providing the sample is representative of the use patterns of all lessees. *Eligible long-term leases* granted to the selected lessees should not be taken into account when using this method to calculate the *exempt percentage*.
- 7.22 Using this method, if the lessee is using the goods mainly in exempt circumstances all leases to that lessee are treated as *exempt*, and if the lessee is using the goods mainly in taxable circumstances, all leases to that lessee are treated as *taxable*.
- 7.23 A time basis (based on number of hours, days etc goods are leased), a unit basis (based on quantity of units leased) or a revenue basis (based on dollar revenue from leasing the goods) may be used. A unit basis should only be used if it is not practicable to use either of the other methods - see also paragraph 7.26.
- 7.24 The *exempt percentage* is the total of days/units/dollars relating to *exempt* leases divided by the total days/units/dollars relating to all leases expressed as a percentage. If the lessor has a reasonable expectation that future lease patterns will not be similar to previous lease patterns, the percentage may be adjusted.<sup>47</sup>
- 7.25 The following example illustrates how to calculate the *exempt percentage*.

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47. See also the comments in paragraphs 7.27 - 7.28.

*Example 3*

A lessor extracts the following data after examining lessees' use patterns in a representative period:

	Exempt Units (000's)	Taxable Units (000's)	Total Units (000's)
Lessee A	500	0	500
Lessee B	450	0	450
Lessee C	0	400	400
Lessee D	0	350	350
Lessee E	300	0	300
TOTALS	1250	750	2000

On the basis of this data, the *exempt percentage* is  $1250/2000 = 63\%$

- 7.26 The Commissioner will only accept calculation of the *exempt percentage* by this method if satisfied that it is not possible to use the methods referred to at paragraphs 7.16 - 7.20. If a lessor is in doubt as to which method to use, the lessor should obtain advice from the Taxation Office.<sup>48</sup>

**New business or goods not previously leased**

- 7.27 The situation often arises where previous leasing patterns cannot be used as a sound basis for calculating an *exempt percentage*, for example if goods have not previously been leased or if the lessor commences a new business which has not previously leased goods.
- 7.28 The *exempt percentage* must be based entirely on expected leasing patterns. Market research may assist in calculating the *exempt percentage*. In these circumstances the Commissioner will normally only enter into an agreement for a short period of time. The length of the period may vary from lessor to lessor based on the quality of the market research and the likely volatility of leasing patterns. At the end of the period, the lessor should review the *exempt percentage* using actual leases in the period as a guide.

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48. In certain circumstances, this method can distort the *exempt percentage*. Applying this method to the facts of *Example 2* gives an exempt percentage of 70%. Hence it is only acceptable where it is not possible to use the other methods.

**Idle time**

- 7.29 Periods of time occur when goods are neither leased nor used for any other purpose. It is common to refer to these periods as idle time. Idle time periods may be ignored in calculating the *exempt percentage* if the goods are available for lease or are being repaired or maintained.

**How does a lessor know whether a lessee is exempt?**

- 7.30 The lessor must be satisfied that the lessee or sub-lessee intends to use the goods during the whole of the term of the lease or sub-lease so as to satisfy one or more exemption Items. When making the agreement, the Commissioner must also be satisfied as to the lessee's or sub-lessee's intention.
- 7.31 While there is no prescribed format in the sales tax law, the Commissioner accepts the following documentation as evidence of the lessee's or sub-lessee's intention to use the goods during the whole of the term of the lease or sub-lease so as to satisfy one or more exemption Items:
- a quotation of the lessee's or sub-lessee's *registration number* (if registered) or an *exemption declaration* (if not registered);<sup>49</sup>
  - results of a survey of lessees or sub-lessees that has been conducted by the lessor; or
  - a letter, statement or declaration from the lessee or sub-lessee.<sup>50</sup>
- 7.32 The above list is not an exhaustive list of acceptable forms of evidence. The evidence should be in writing and indicate that the lessee or sub-lessee intends to use the goods during the whole of the term of the lease or sub-lease so as to satisfy one or more exemption Items.
- 7.33 A private ruling may be obtained from the Taxation Office if a lessor is unsure whether a particular form of evidence is acceptable. Evidence should be obtained for all leases in the representative period selected and the period selected for review of an existing agreement.<sup>51</sup>

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49. Evidence in the form of a quotation is acceptable as evidence only when it is in the form that would be approved by the Commissioner under Sec 86 STAA if it was a *quote*. It is stressed that the evidence is not a *quote* for the purposes of the sales tax law. See also Bulletin No 13 - *Buying goods free of sales tax*. In relation to the retention of evidence see Sec 127 STAA..

50. An example of an acceptable statement is set out in Attachment C at page 43 of this Ruling.

51. A lessor will have to establish whether a lessee or sub-lessee is using the goods to satisfy a *business inputs* exemption Item if it is intended to seek an agreement under subsection 15A(4).

*Associated goods*

- 7.34 An *application to own use* of *associated goods* is exempt if the *associated goods* are covered by an agreement under subsection 15A(3) and the *exempt percentage* is 100%. Alternatively, the taxable value of an *application to own use* of *associated goods* is reduced if the *exempt percentage* is less than 100%.
- 7.35 Under subsection 15A(3), the agreement may specify separate *exempt percentages* for particular kinds of *associated goods*. These are parts, fittings, accessories or attachments for, or materials for use so as to become an integral part of, the goods covered by an agreement under subsection 15A(2) (called the *principal goods* in this Ruling). The *associated goods* must be for use by the lessor *exclusively* in relation to the *principal goods*.
- 7.36 In providing information for the purpose of making an agreement in relation to *associated goods*, the lessor should be aware that certain exemption Items exempt the *principal goods*, but do not exempt the parts, accessories, fittings or attachments.
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- 7.37 If the *associated goods* are used only in relation to particular *principal goods*, the *exempt percentage* for the *associated goods* is generally the same as the *exempt percentage* for the *principal goods*. If the *associated goods* are used in relation to different *principal goods*, it may be possible to determine an *exempt percentage* based on the weighted average *exempt percentages* of the *principal goods*. Alternatively, a review of the use of the *associated goods* may be conducted over a representative period to calculate the proportion of exempt use.
- 7.38 *Associated goods* include goods which become an integral part of the other goods, that is, goods which belong as part of the whole unit and are a component or constituent part of the unit which is required for the unit to operate. To become an integral part, the goods must become a permanent part of the whole unit. Examples of goods that become integral parts of other goods and are thus *associated goods* include paint, lubricants, oils and greases. However, detergents and other cleaners do not generally become an integral part of other goods.
- 7.39 The following examples illustrate the calculation of the *exempt percentage*:

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52. See for example Item 63(1) in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* which exempts buses that are used mainly in transporting passengers for reward and provide seating accommodation for 12 or more adult passengers. However, there is no exemption for parts, accessories, fittings or attachments for buses.

*Example 4*

A lessor leases forklifts and has an *exempt percentage* of 75% for the forklifts. A particular bolt is used only on those forklifts. The use of the bolt is in proportion to the exempt and taxable uses of the forklifts.

The *exempt percentage* for the bolt is 75%.

*Example 5*

A lessor has a pool of 100 generators and 200 cleaning machines with *exempt percentages* of 25% and 75% respectively. A particular spare part is used on both classes of goods. The use of the spare part is in proportion to the exempt and taxable uses. The use is also in proportion to the number of units in each class of goods.

The *exempt percentage* is 58%.<sup>53</sup>

*Example 6*

A lessor leases forklifts 60% of the time to exempt users and 40% of the time to taxable users. The *exempt percentage* for the forklifts is 60%.

A particular attachment for the forklifts is used only on the forklifts leased to exempt users. Therefore the *exempt percentage* for the attachment is 100%.

*Repair equipment*

7.40 An *application to own use* of *repair equipment* is exempt if the *repair equipment* is covered by an agreement under subsection 15A(4) and the *exempt percentage* is 100%. Alternatively, the taxable value of an *application to own use* of *repair equipment* is reduced if the *exempt percentage* is less than 100%.

7.41 The agreement specifies an *exempt percentage* for *repair equipment* which is for use by the lessor *exclusively* to repair or maintain the *principal goods*. However, under subsection 15A(5), an *exempt percentage* for *repair equipment* may only be agreed

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53. The weighted average approach is used. The *exempt percentage* is  $((0.25 \times 100) + (0.75 \times 200)) / 300 = (25 + 150) / 300 = 175/300 = 58\%$  (rounded).

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if the *principal goods* are leased more than 50% in exempt circumstances under one or more of the *business inputs* exemptions.<sup>54</sup>

7.42 The following examples illustrate the calculation of the *exempt percentage*:

*Example 7*

A lessor uses *repair equipment* exclusively to repair three generators. Leases of generators in a representative period are as follows:

	Business Input Days	Other Exempt Days	Taxable Days	Total Days
Generator A				
Lease 1	30	0	0	30
Lease 2	0	50	0	50
Lease 3	0	20	0	20
Generator B				
Lease 4	60	0	0	60
Lease 5	0	0	50	50
Lease 6	0	0	20	20
Generator C				
Lease 7	30	0	0	30
Lease 8	0	40	0	40
Lease 9	0	0	20	20
TOTALS	120	110	90	320

On the basis of this data, the *exempt percentage* for the generators is  $(120 + 110) / 320 = 230 / 320 = 72\%$ .

The *exempt use* for the *repair equipment* in repairing *business inputs* goods is  $120/320 = 38\%$ . Because the *exempt use* is not greater than 50%, due to the operation of subsection 15A(5), there cannot be an agreement for the *repair equipment*.

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<sup>54</sup> Business input exemption Items are Items 1, 2, 18, 23, 28, 29, 30, 33, 34, 35, 36 and 38 in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

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*Example 8*

A lessor uses *repair equipment* exclusively to repair three forklifts. Leases of the forklifts in a representative period are as follows:

	Business Input Days	Other Exempt Days	Taxable Days	Total Days
Forklift A				
Lease 1	0	50	0	50
Lease 2	0	0	40	40
Lease 3	0	10	0	10
Forklift B				
Lease 4	100	0	0	100
Lease 5	40	0	0	40
Lease 6	0	10	0	10
Forklift C				
Lease 7	0	20	0	20
Lease 8	90	0	0	90
Lease 9	80	0	0	80
TOTAL	310	90	40	440

On the basis of this data, the *exempt percentage* for the forklifts is  $(310 + 90) / 440 = 400 / 440 = 91\%$ .

The *exempt use* for the *repair equipment* in repairing *business inputs* goods is  $310/440 = 70\%$ . Because the *exempt use* is greater than 50% there can be an agreement.

*Example 9*

A lessor leases out pallets which are used:

- 60% in exempt circumstances under *business inputs* exemption Items;
- 30% in exempt circumstances under *non-business inputs* exemption Items; and
- 10% in taxable circumstances.

The lessor purchases hammers that are used exclusively to repair and maintain the pallets.

On the assumption that the pallets flow evenly through the pool, the *exempt percentage* for the pallets is 90%. The *exempt percentage* for the hammers is 60% because this is the likely use in repairing pallets leased under *business inputs* exemption Items.

### *Associated goods and repair equipment for Australian-used goods*

- 7.43 An *exempt percentage* for *associated goods* and *repair equipment* may be agreed, and the *application to own use* of the goods exempted, or the taxable value of the *application to own use* reduced regardless of whether the principal goods were *assessable goods* or *Australian-used goods* immediately before the granting of the first lease of the goods, providing the *principal goods* are covered by an agreement under subsection 15A(2).

### *The agreement*

- 7.44 The lessor should write to the Taxation Office requesting an agreement for the *principal goods*, *associated goods* and *repair equipment* as applicable. The lessor should provide information regarding the proposed *exempt percentages* and the basis for calculation of the *exempt percentages*.
- 7.45 The Commissioner will make arrangements with the lessor to enter into the agreement. The Commissioner may review a lessor's calculations. The agreement is signed by the Commissioner (or a person authorised by the Commissioner) and a representative of the lessor, being the proprietor, a partner or public officer, or any person authorised to sign on their behalf, as the case may be. The agreement will apply from the date stated in the agreement. The date stated in the agreement will be the date of receipt by the Commissioner of all necessary information from the lessor.
- 7.46 In addition to specifying the *exempt percentages* and the term of the agreement, it is likely that the agreement will include a number of conditions. Typical conditions include:
- A statement that the information provided by the lessor is not false or misleading.
  - Provision for the review of the agreement. Generally the exempt use should be reviewed regularly by the lessor to verify that it is still in accordance with the agreed *exempt percentages*. If the exempt use falls

an agreed amount (the variation factor) below the *exempt percentage*, the lessor should approach the Commissioner to renegotiate the agreement. Generally, the higher the *exempt percentage*, the greater the variation factor.

- Provision for the impact of law amendments on the agreement.
- Provision for the impact of rulings from the Commissioner on the agreement.
- That the lessor will retain records relating to the calculation of the *exempt percentage*.
- Provisions relating to the cancellation of the agreement by either the lessor or the Commissioner.

### *Applying the agreement*

#### **Acquisition of goods**

- 7.47 If the lessor is registered, the lessor may acquire *principal goods*, *associated goods* or *repair equipment* that are covered by an agreement tax free by quoting the lessor's *registration number* to the supplier or Customs. If the lessor is not registered, the lessor may quote an *exemption declaration* in the form of ED4 or ED4P (for *principal goods*) or ED5 or ED5P (for *associated goods* and *repair equipment*) to the supplier or Customs. <sup>55</sup>
- 7.48 If a lessor quotes, a total exemption is obtained. A lessor cannot partially quote using the *exempt percentage* as a basis for the partial quote.

#### **Payment of tax**

- 7.49 If a lessor holds tax-free goods, either because of a quotation or because the lessor manufactured the goods
- the goods are *assessable goods*; and
  - the goods are not *always-exempt goods*

the lessor has a liability to account for the tax payable on the goods at the time of the *lease AOU (principal goods)* or the *application to own use (associated goods and repair equipment)* unless the *exempt percentage* is 100%. <sup>56</sup>

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55. See Secs 82(1)(g), 82(1)(h), 83(1)(c) and 83(1)(ca), STAA. See also Bulletin No 13 - *Buying goods free of sales tax*.

56. Where the *exempt percentage* is 100%, the *lease AOU* of the *principal goods* is exempt under Sec 26, STAA. The *application to own use* of the *associated goods* and *repair equipment* is exempt under Item 195(1) in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

7.50 The *taxable value*, on which tax is payable, is:

- if the goods are purchased from an Australian supplier under quote - purchase price;
- if the goods are imported by the lessor - 120% of (customs value + customs duty); or
- if the goods are manufactured by the lessor - the *notional wholesale selling price*.<sup>57</sup>

7.51 Before applying the appropriate rate of tax it is necessary to calculate the *exempt part* of the *taxable value*. The *exempt part* is the *taxable value* multiplied by the *exempt percentage*. The *taxable value* is then reduced by the *exempt part*.<sup>58</sup>

*Example 10*

A lessor has an *exempt percentage* of 25% for forklifts. The lessor quotes an *exemption declaration* to purchase all forklifts tax-free. The purchase price of a forklift is \$50,000.

At the *lease AOU*, the lessor calculates the liability as follows:

Taxable value	\$50,000	
Exempt part	\$12,500	(25% of \$50,000)
Reduced taxable value	\$37,500	(\$50,000 - \$12,500)
Tax payable @ 22%	\$8,250	

7.52 The tax payable on the goods must be paid to the Taxation Office within 21 days of the close of the month (if the person is a *monthly remitter*) or the close of the quarter (if the person is a *quarterly remitter*) in which the *lease AOU* or *application to own use* occurs.<sup>59</sup>

**Tax borne at time of acquisition of goods**

7.53 A credit of the *tax borne* may be claimed by the lessor from the Taxation Office under credit ground CR18A if the lessor has borne tax on the *principal goods*. The amount of the credit is the tax previously borne multiplied by the *exempt percentage* specified in the agreement.<sup>60</sup>

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57. The *lease AOU* or *application to own use* is an *assessable dealing*, ie AD3c (Australian goods), AD3b (manufactured goods) or AD13c (imported goods). The liability to tax arises through the operation of Sec 16 STAA. Refer also to the definition of *assessable goods* and *taxable value* in Sec 5, STAA and *Taxation Ruling SST Ruling No 2* on the subject of *taxable value*.

58. Refer to Sec 50A, STAA.

59. A lessor should contact the Taxation Office if they are unsure about arrangements for paying the tax.

60. Refer to definition of *borne tax* in Secs 5 and 11, STAA. See also Table 3 to STAA, also Part 4 (Secs 51-60) of STAA.

*Example 11*

A lessor has an *exempt percentage* of 25% for forklifts. Tax is borne on all forklifts purchased. The purchase price of a forklift was \$61,000 with a sales tax component of \$11,000.

At the time of the *lease AOU*, the lessor calculates the credit claim as follows:

Tax borne	\$11,000	
Credit claim	\$2,750	(25% of \$11,000)

- 7.54 If the lessor has *borne tax* on *associated goods* or *repair equipment*, the lessor can only claim a credit from the Taxation Office under credit ground CR2 if the lessor is registered and the *exempt percentage* is 100%. Otherwise there is no provision in the law to claim a credit. <sup>61</sup>

*Finance leases*

- 7.55 Rather than purchasing or manufacturing goods to be leased, a lessor may 'acquire' the goods by leasing them from another person, typically a finance institution. Hence, there are two leases, a *finance lease* from the finance institution to the lessor (called an *operating lessor* in this Ruling) and an *operating lease* from the *operating lessor* to the physical user of the goods. <sup>62</sup>
- 7.56 Due to the ownership requirement in the statutory definition of *lease*, the Commissioner cannot enter into an agreement with the *operating lessor* (not being the owner) and, in any case, as the *lease AOU* is by the finance institution (being the owner), an agreement with the *operating lessor* would be meaningless. However, in some instances the finance institution is located overseas. If the first *application to own use* of the goods in Australia is by the *operating lessor* and the *operating lessor* is the person who makes the local entry, the Commissioner will enter into the agreement with the *operating lessor*. <sup>63</sup>

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61. Refer to definition of *borne tax* in Secs 5 and 11, STAA. See also Table 3 to STAA, also Part 4 (Secs 51-60) of STAA. Note in particular Credit Ground CR22 does not apply. *Taxation Laws Amendment Bill (No 2) 1995* introduces credit ground CR2A. If the Bill receives Royal Assent a lessor who is not registered will be able to claim a credit from the Taxation Office if the exempt percentage is 100%.

62. It should be noted that a *lease* includes a hire purchase agreement.

63. Refer to paragraph 3.2 regarding the statutory definition of *lease* and paragraph 1.2 regarding the definition of *lease AOU*. Refer also to Sec 23, STAA for an explanation of the concept of *local entry*.

7.57 If the agreement is with the finance institution, two types of agreements may be made, viz:

- a single agreement with the finance institution covering all goods of a particular kind leased by the finance institution; or
- a number of separate agreements with the finance institution, with each agreement covering goods of a particular kind leased to an individual *operating lessor*.

The finance institution may choose which type of agreement it will make. <sup>64</sup>

7.58 If the second approach is used, on request from the *operating lessor* the Commissioner will issue a ruling to the *operating lessor* stating the proportion of exempt use that the Commissioner considers to be appropriate in respect of leases of goods of a particular kind granted by the *operating lessor*. With the written consent of the *operating lessor*, that ruling will be used as a basis for the agreement between the finance institution and the Commissioner.

7.59 In some instances, the *operating lessor* may not wish to obtain a ruling. However, to protect the finance institution's interests, the finance institution may require evidence from the *operating lessor* as to the sub-lessee's use.

7.60 As an administrative measure the *operating lessor* may furnish a declaration to the finance institution stating the proportion of exempt use that the *operating lessor* considers to be appropriate in respect of leases of goods of a particular kind granted by the *operating lessor*. The declaration will be used as a basis for the agreement between the finance institution and the Commissioner. A suggested format of the declaration is at Attachment D on page 44. If a finance institution or an *operating lessor* is unsure what format the declaration may take, the lessor may seek advice from the Taxation Office.

7.61 Another option is for the finance institution to appoint the *operating lessor* as its agent for the purpose of entering into an agreement with the Commissioner under subsection 15A(2). In these circumstances, the agreement may be made by the *operating lessor* as agent for the finance institution.

### **Associated goods and repair equipment**

7.62 Although it may not commonly occur, if the finance institution obtains and applies to own use *associated goods* and *repair equipment*, an agreement may be entered

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64. Strictly speaking, there can only be a single agreement. However, the Commissioner is prepared to enter into separate agreements where necessary.

into between the Commissioner and the finance institution for *associated goods* and *repair equipment* (where applicable). The finance institution may acquire the goods tax-free and if the *exempt percentage* is less than 100%, should remit the tax payable to the Taxation Office at the time of the *application to own use* of the goods.

- 7.63 If the *operating lessor* obtains and applies to own use *associated goods*, an agreement may be entered into between the Commissioner and the finance institution for *associated goods*. The *operating lessor* may acquire the *associated goods* tax-free and if the *exempt percentage* is less than 100%, should remit the tax payable to the Taxation Office at the time of the *application to own use* of the goods.
- 7.64 However, if the *operating lessor* obtains and applies to own use *repair equipment* and there is no use of the goods by the finance institution, there is no provision in the sales tax law for the Commissioner to enter into an agreement for *repair equipment* with either the finance institution or the *operating lessor*. Therefore the *operating lessor* may not acquire the *repair equipment* tax-free nor claim a credit at the time of the *application to own use* of the *repair equipment*.<sup>65</sup>

### *Length of lessor's ownership of goods*

- 7.65 For the purpose of entering into an agreement under subsection 15A(2), a lessor has to intend to own the particular class of goods, if not necessarily lease the goods, for the entire statutory period. If the lessor does not intend to own the particular class of goods for the entire statutory period, the Commissioner is unable to enter into an agreement under subsection 15A(2) for the goods.<sup>66</sup> However, once an agreement has been made for a particular class goods, the lease of individual goods within the class covered by the agreement is generally an *eligible short-term lease*, and the *exempt percentage* may be applied regardless of how long the lessor intends to own those goods.

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65. Subsection 15A(4) only allows an agreement between the Commissioner and the finance institution for goods that are for use by the finance institution. If the *operating lessor* carries out the repair and maintenance, the *repair equipment* cannot be said to be for use by the finance institution.

66. This view is consistent with the scheme of the legislation. For example, to obtain an exemption, an exemption user must intend to own the goods for the length of the statutory period.

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## Chapter 8: Post-trial sales and post-trial leases

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- 8.1 The law in relation to post-trial sales and post-trial leases was amended with effect from 28 November 1994. This Chapter sets out the position after the amendment. If a person requires information on how the law operated before the amendment, that person should contact the Taxation Office.
- 8.2 The law now allows a credit for sales tax borne on goods that are the subject of:
- multiple exempt trial-leases or trial-loans;
  - multiple demonstrations to exempt persons; and
  - a sale, or lease for the remainder of the statutory period, to any exempt person.<sup>67</sup>
- 8.3 The later sale or lease of the goods may be to an exempt person other than the person who, for example, trialed the goods.
- 8.4 An *exempt trial-lease* or an *exempt trial-loan* is a lease or a loan (as the case may be) to a person who intends to use the goods during the whole of the term of the lease or loan to satisfy the requirements of an exemption Item. The lessee or borrower must give the lessor or lender evidence, in a form approved by the Commissioner. The evidence must be given before the end of the lease or loan.
- 8.5 The person to whom the sale is made or lease is granted for the remainder of the statutory period must also give evidence of intention to use the goods during the remainder of the statutory period so as to satisfy an exemption Item. The evidence must be given at or before the time of the sale or lease.
- 8.6 The evidence of use may be in the form set out in Attachment E on page 45. Alternatively, the quotation of the person's *registration number* (if registered) or an *exemption declaration* (if not registered) is accepted as evidence of use. The claimant must retain the evidence for at least five years.<sup>68</sup>

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67. Refer to credit ground CR18B and the amended Sec 15B, STAA.

68. Evidence in the form of a quotation is acceptable as evidence only when it is in the form that would be approved by the Commissioner under Sec 86, STAA if it was a *quote*. It is stressed that the evidence is not a *quote* for the purposes of the sales tax law. See also Bulletin No 13 - *Buying goods free of sales tax*. In relation to the retention of evidence see Sec 127, STAA.

- 8.7 The claimant is entitled to a credit of the tax borne under credit ground CR18B if all of the following conditions are satisfied:
- the goods were *assessable goods* immediately before the first exempt trial;
  - the only use of the goods from the time of the first trial to the time of the ultimate sale or lease is in exempt trials or exempt demonstrations;
  - the ultimate sale or lease for the remainder of the statutory period is in exempt circumstances; and
  - the tax has not been passed on.
- 8.8 The credit arises at the time of the ultimate sale or lease. <sup>69</sup>
- 8.9 The object of section 15B is to provide for multiple *exempt trial-leases* and *trial-loans*. There is no credit if there are demonstrations, leases or loans to any person who is not entitled to exemption during the statutory period. Thus if a machine was trialed by a Government Department, then a mining company, and then a plumber who is not entitled to exemption, the credit is not available.
- 8.10 The storage of goods awaiting a sale or another trial, or the transportation of the goods to a trial user's premises and back to the claimant's premises does not affect a claimant's entitlement.
- 8.11 The following examples illustrate the operation of the law. For the purposes of these examples the claimant has *borne tax* on the goods, the statutory period is two years and all exempt users have given evidence as required.

*Example 12*

Trial-loan - exempt user A	2 months
Trial-lease - exempt user B	6 months
Sale - exempt user C.	

Credit arises at time of sale - all trials were to exempt users and sale is to an exempt user.

*Example 13*

Trial-lease - exempt user D	12 months
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69. Refer to the definition of *borne tax* in Secs 5 and 11, STAA and Table 3 to STAA, also Part 4 (Secs 51-60) of STAA. It should be noted that the claimant should have either acquired the goods at a tax-inclusive price or paid tax on the goods to the Taxation Office at the time of the *lease AOU* or *application to own use*. See Chapter 1 which discusses a lessor's obligations at the time of the *lease AOU* or *application to own use*.

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Trial-loan - taxable user E                      1 month  
 Sale - exempt user F.

Credit does not arise due to trial-loan to taxable user E.

*Example 14*

Trial-loan - exempt user G                      10 months  
 Trial-lease - exempt user H                      10 months  
 Sale - taxable user J

Credit does not arise due to sale to taxable user J.

*Example 15*

Trial-loan - exempt user K                      10 months  
 Trial-lease - exempt user L                      10 months  
 Lease - exempt user M                          5 months

Credit arises at time of lease to exempt user M - all trials were by exempt users and lease was to an exempt user for remainder of the statutory period.

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**Commissioner of Taxation**

2 August 1995

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FOI Index Detail

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*subject references*

- leases  
 - bailment  
 - eligible long-term lease

case references

- **Brambles Australia Ltd v Commissioner of Taxes (NT) (1993)**  
 92 NTR 1; 26 ATR 587; 93 ATC 4888
- **Brambles Holdings Ltd; FC of T v (1991)** 28 FCR 451;  
 72 LGRA 284; 99 ALR 523; 21 ATR 1429; 91 ATC 4285.
- **Otto Australia Pty Ltd v FC of T (1991)** 28 FCR 477;  
 72 LGRA 310; 21 ATR 1453; 91 ATC 4305.
- **Radaich v Smith (1959)** 101 CLR 209

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# SST No 4

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- eligible short-term lease
- export of leased goods
- trial-loans/trial-leases

*legislative references*

- Sales Tax Assessment Act 1992
  - Sections 5, 15A, 15B, 26, 32, 50A
  - Schedule 1
  - Table 1; Table 3
- Sales Tax (Exemptions and Classifications) Act 1992
  - Item 195, Schedule 1



# SST No 4

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## ATTACHMENT A

*Sales Tax Assessment Act 1992*  
**STATEMENT TO LESSOR OF LESSEE'S INTENTION TO EXPORT GOODS  
BEFORE USING THE GOODS**  
under section 32

**WARNING**

You must ensure that all the information you supply in this statement is correct. The *Taxation Administration Act 1953* provides for penalties of up to \$5,000 and imprisonment for up to 12 months for material statements that are false or misleading made for a purpose in connection with the operation of the sales tax law.

Lessor's name & address: .....  
.....  
.....

Telephone number: .....

Description of goods: .....

Date of grant of lease: .....

***Lessee's statement to the lessor***

I intend to export the goods described above before using them.

Lessee's signature: .....

Lessee's name & address: .....  
.....  
.....

Telephone number: .....

Date: .....

NOTE : If this statement is incorporated into a lessor's lease agreement, the Warning may be omitted and other details such as the lessor's name and address and the customer's name and address may be omitted where those details are already present in the lease agreement.

# SST No 4

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## ATTACHMENT B

*Sales Tax Assessment Act 1992*

### STATEMENT TO LESSOR OF LESSEE'S OR SUB-LESSEE'S INTENTION TO USE GOODS IN EXEMPT CIRCUMSTANCES in relation to an eligible long-term lease under section 5

#### WARNING

You must ensure that all the information you supply in this statement is correct. The *Taxation Administration Act 1953* provides for penalties of up to \$5,000 and imprisonment for up to 12 months for material statements that are false or misleading made for a purpose in connection with the operation of the sales tax law.

Lessor's name & address: .....

Telephone number: .....

Description of goods: .....

Date of grant of lease: .....

#### *Lessee's or sub-lessee's statement to the lessor*

I intend to use the goods described above during the whole of the statutory period (the shorter of two years, the effective life of the goods or a period specified by the Commissioner for example, 40,000 km of running for certain types of motor vehicles) so as to satisfy exemption Item \*..... in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

\* [insert exemption Item number]

Lessee's or sub-lessee's signature: .....

Lessee's or sub-lessee's name & address: .....

Telephone number: .....

Date: .....

NOTE : If this statement is incorporated into a lessor's lease agreement, the Warning may be omitted and other details such as the lessor's name and address and the customer's name and address may be omitted where those details are already present in the lease agreement.

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## ATTACHMENT C

*Sales Tax Assessment Act 1992*

### STATEMENT TO LESSOR OF LESSEE'S OR SUB-LESSEE'S INTENTION TO USE GOODS IN EXEMPT CIRCUMSTANCES

in relation to an eligible short-term lease under section 15A

#### WARNING

You must ensure that all the information you supply in this statement is correct. The *Taxation Administration Act 1953* provides for penalties of up to \$5,000 and imprisonment for up to 12 months for material statements that are false or misleading made for a purpose in connection with the operation of the sales tax law.

Lessor's name & address: .....

Telephone number: .....

Description of goods: .....

Date of grant of lease: .....

#### *Lessee's or sub-lessee's statement to the lessor*

I intend to use the goods described above during the whole of the term of the lease so as to satisfy exemption Item \*..... in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

\* [insert exemption Item number]

Lessee's or sub-lessee's signature: .....

Lessee's or sub-lessee's name & address: .....

Telephone number: .....

Date: .....

NOTE : If this statement is incorporated into a lessor's lease agreement, the Warning may be omitted and other details such as the lessor's name and address and the customer's name and address may be omitted where those details are already present in the lease agreement.

# SST No 4

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## ATTACHMENT D

*Sales Tax Assessment Act 1992*

### STATEMENT TO FINANCE LESSOR AS TO LESSEE'S USE OF GOODS

in relation to an eligible short-term lease under section 15A

#### WARNING

You must ensure that all the information you supply in this statement is correct. The *Taxation Administration Act 1953* provides for penalties of up to \$5,000 and imprisonment for up to 12 months for material statements that are false or misleading made for a purpose in connection with the operation of the sales tax law.

Finance lessor's name & address: .....  
.....  
.....

Telephone number: .....

#### *Operating lessor's statement to the finance lessor*

The percentage of the statutory period during which it is likely that the following goods of a particular kind will be used by me for sub-lease (other than eligible long-term leases) to persons who intend to use the goods during the whole of the term of the sub-lease so as to satisfy one or more exemption Items in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* is set out below:

Goods	Percentage of statutory period
.....	.....
.....	.....

Operating lessor's signature: .....

Operating lessor's name & address: .....  
.....  
.....

Telephone number: .....

Date: .....

# SST No 4

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## ATTACHMENT E

*Sales Tax Assessment Act 1992*

### STATEMENT TO LESSOR, LENDER OR VENDOR OF USE OR INTENTION TO USE GOODS IN EXEMPT CIRCUMSTANCES

in relation to an exempt trial-lease, exempt trial-loan, post-trial lease or post-trial sale under section 15B

#### WARNING

You must ensure that all the information you supply in this statement is correct. The *Taxation Administration Act 1953* provides for penalties of up to \$5,000 and imprisonment for up to 12 months for material statements that are false or misleading made for a purpose in connection with the operation of the sales tax law.

Lessor's, lender's or vendor's name & address: .....

Telephone number: .....

Description of goods: .....

Date of lease/loan/sale: .....

#### ***Lessee's, borrower's or purchaser's statement to the lessor, lender or vendor***

I have used the goods described above during the whole of the term of the trial-lease/trial-loan or intend to use the goods for the remainder of the statutory period (that is, the shorter of two years, the effective life of the goods or a period specified by the Commissioner, for example, 40,000 km of running for certain types of motor vehicles) so as to satisfy exemption Item \*..... in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.

\* [insert exemption Item number]

Lessee's, borrower's or purchaser's signature: .....

Lessee's, borrower's or purchaser's name & address: .....

Telephone number: .....

Date: .....

NOTE : If this statement is incorporated into a lessor's lease agreement, the Warning may be omitted and other details such as the lessor's name and address and the customer's name and address may be omitted where those details are already present in the lease agreement.