

GSTD 2012/D2 - Goods and services tax: when are telecommunication supplies made under arrangements for global roaming outside Australia by an Australian resident telecommunication supplier GST-free under item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999?

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This document has been finalised.



Draft Goods and Services Tax Determination

Goods and services tax: when are telecommunication supplies made under arrangements for global roaming outside Australia by an Australian resident telecommunication supplier GST-free under item 3 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

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Background

1. This question was considered amongst others in issue 3 of the Telecommunications Industry Liaison Group – Issues Register (issues register). Issue 3 deals with the GST treatment of specific telecommunications supplies.¹
2. The issues register was a public ruling for the purposes of former section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* before 1 July 2010. The Commissioner's view in this draft Determination is consistent with those expressed in the issues register.
3. In this draft Determination, references to a telecommunication supplier mean a carrier or a carriage service provider as defined in the *Telecommunications Act 1997* or an Internet service provider as defined in Schedule 5 to the *Broadcasting Services Act 1992*.

¹ Other issues dealt with in the issues register are addressed in GSTD 2012/D1; GSTD 2012/D3 and GSTD 2012/D4.

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Ruling

4. Telecommunication supplies made under arrangements for global roaming outside Australia by an Australian resident telecommunication supplier are GST-free under item 3 in the table in subsection 38-190(1) (item 3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)² when:

- (a) the supply is made to the subscriber who is not in Australia when the thing supplied is done; and
- (b) the effective use or enjoyment of the supply by the subscriber takes place outside Australia.³

5. The application of paragraph (b) of item 3 (effective use or enjoyment of the supply takes place outside Australia) is explained in Goods and Services Tax Ruling GSTR 2007/2.⁴

6. Subsection 38-190(4) extends the scope of item 3. Subsection 38-190(4) provides that a supply is taken, for the purposes of item 3, to be a supply made to a recipient who is not in Australia if:

- (a) it is a supply under an agreement entered into, whether directly or indirectly, with an Australian resident; and
- (b) the supply is provided, or the agreement requires it to be provided, to another entity outside Australia.

7. For the purposes of paragraph 38-190(4)(b), the word *provided* is to be contrasted with the term *made* in item 3. Consistent with the views expressed in Goods and Services Tax Ruling GSTR 2007/2, we consider that 'provided' in the context of subsection 38-190(4) is used, in relation to a supply covered by item 3, to distinguish between the contractual flow of the supply made to the recipient and, in the performance of a service (or in the doing of some thing), the actual flow to another entity outside Australia.⁵

8. Subsection 38-190(4) applies where a supply of global roaming services is made to an Australian business for an employee overseas. The supply is covered by subsection 38-190(4) because the supply is made to a resident entity (the Australian business) but is provided to another entity (the employee), outside Australia. The supply is therefore taken to satisfy paragraph (a) of item 3.

9. The Explanatory Memorandum accompanying the Bill⁶ that inserted subsection 38-190(4) supports the application of subsection 38-190(4) to a supply of global roaming services outside Australia. It uses the supply of mobile telephone roaming to an Australian business with an employee overseas as an example of the types of supplies covered by that subsection.

² All legislative references are to the GST Act unless otherwise indicated.

³ Item 3 in the table in subsection 38-190(1) also specifies that the supply be neither a supply of work physically performed on goods in Australia, nor a supply directly connected with real property situated in Australia, but these conditions are not relevant here.

⁴ Goods and Services Tax Ruling GSTR 2007/2 *Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?*

⁵ For the meaning of 'provided to another entity', refer to paragraph 52 to 81 of GSTR 2007/2.

⁶ Refer to paragraph 3.27 of the Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000.

Example – Global Roaming – employee of the Australian subscriber is overseas – makes and receives calls

10. An Australian resident company, Aus Co, has a mobile phone agreement with Aus Telco. Greg, an employee of Aus Co, travels to China for business. Greg has a work mobile provided by Aus Co that is supplied under a mobile phone agreement with Aus Telco.

11. While in China Greg accesses the mobile service through a Chinese telecommunication supplier (China Telco). Greg uses his work mobile to call a business contact in Australia and a business contact in China. Greg also uses his work mobile to receive a phone call from a business contact in Australia and a business contact in China.

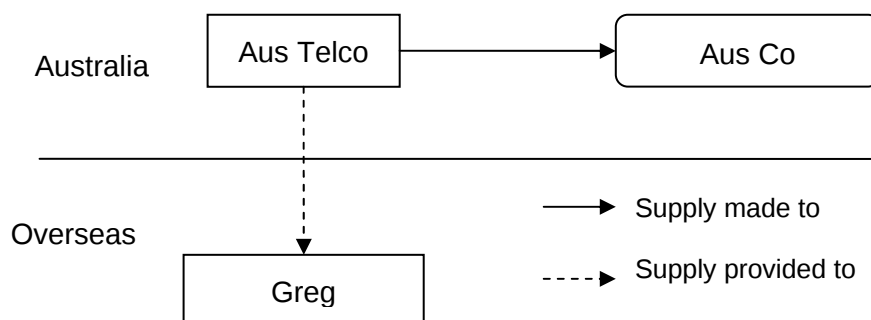
12. The supply of telecommunication services made under arrangements for global roaming outside Australia by Aus Telco to Greg's employer, Aus Co, is a supply made to a resident company that is in Australia when the services are performed. The supply does not satisfy paragraph (a) of item 3 unless subsection 38-190(4) applies.

13. The supply of telecommunication services by Aus Telco to Aus Co is a supply under an agreement entered into with a resident. Paragraph 38-190(4)(a) is therefore satisfied.

14. Paragraph 38-190(4)(b) is only satisfied if the supply is provided to another entity outside Australia. The supply by Aus Telco is made to the resident employer company. However, it is the employee that is receiving the telecommunication supply when he uses his work mobile. As Greg is an individual who is outside Australia when the supply is performed, the supply is provided to another entity outside Australia. Paragraph 38-190(4)(b) is satisfied.

15. The supply that Aus Telco makes to Aus Co is GST-free under item 3.

16. Section 38-570 has no application to the telecommunication supplies as they are not made under arrangements for global roaming in Australia.⁷



⁷ Telecommunication supplies made under arrangements for global roaming in Australia covered under subsection 38-570(1) and subsection 38-570(3) are discussed in GSTD 2012/D4.

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Date of effect

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

Commissioner of Taxation

6 June 2012

Appendix 1 – Your comments

18. You are invited to comment on this draft Determination including the proposed date of effect. Please forward your comments to the contact officer by the due date.

19. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the ATO website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTD 2012/D1; GSTD 2012/D3;
GSTD 2012/D4; GSTR 2007/2

Subject references:

- goods and services tax
- GST free
- non-resident entities
- non-resident individuals
- supplies used or enjoyed outside Australia
- telecommunication supply

Legislative references:

- ANTS(GST)A 1999 38-190
- ANTS(GST)A 1999 38-190(1)
- ANTS(GST)A 1999 38-190(1) item 3

- ANTS(GST)A 1999 38-190(1) item 3(a)
- ANTS(GST)A 1999 38-190(1) item 3(b)
- ANTS(GST)A 1999 38-190(4)
- ANTS(GST)A 1999 38-190(4)(a)
- ANTS(GST)A 1999 38-190(4)(b)
- ANTS(GST)A 1999 38-570
- ANTS(GST)A 1999 38-570(1)
- ANTS(GST)A 1999 38-570(3)
- TAA 1953 Sch 1 105-60
- Broadcasting Services Act 1992 Sch 5
- Telecommunications Act 1997

Other references:

- Explanatory Memorandum to the Indirect Tax Legislation Amendment Bill 2000.
- The Telecommunications Industry Liaison Group – Issues Register

ATO references

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