

GSTD 2012/D4 - Goods and services tax: when are telecommunication supplies made under arrangements for global roaming in Australia by an Australian resident telecommunication supplier GST-free under subsection 38-570(1) and subsection 38-570(3) 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 in Australia by an Australian resident telecommunication supplier GST-free under subsection 38-570(1) and subsection 38-570(3) of the *A New Tax System (Goods and Services Tax) Act 1999*?

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This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

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.

¹ Other issues dealt with in the issues register are addressed in GSTD 2012/D1; GSTD 2012/D2 and GSTD 2012/D3.

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3. In this draft Determination, a ‘telecommunication supplier’ means 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*.²
4. In this draft Determination, an interconnection service is a service that enables telecommunication suppliers to transfer calls or internet traffic between each other’s networks.
5. The telecommunication supplies covered by this draft Determination include global mobile call roaming and global internet roaming, referred to as global roaming.

Ruling

6. Telecommunication supplies made under arrangements for global roaming in Australia by an Australian resident telecommunication supplier are GST-free when subsection 38-570(1) and subsection 38-570(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)³ are satisfied.
7. In order to be GST-free, these telecommunication supplies must be made to a non-resident telecommunication supplier and provided to enable the user of the portable device that has a subscription to a telecommunications network outside Australia (the subscriber), to roam in Australia.
8. A telecommunication supply⁴ is defined as a supply relating to the transmission, emission or reception of signals, writing, images, sounds or information of any kind by wire, radio, optical or other electromagnetic systems.
9. Telecommunication supplies include the supply of:
- telephone calls;
 - transmission element of international data exchange;
 - call back services;
 - the provision of leased lines, circuits and global networks;
 - e-mail and Internet access;
 - satellite transmissions;
 - the related transfer or assignment of the right to use capacity for the transmission, emission or reception; and
 - the provision of access to global information networks.
10. However, telecommunication supplies do not include the following supplies delivered through telecommunication mediums:
- licences to use intellectual property such as computer software; and
 - consultancy services provided via the Internet.

² Subsection 38-570(3) only applies to supplies made by such suppliers. See also paragraph 2.22 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No.3) Bill 2010.

³ All legislative references are to the GST Act unless otherwise indicated.

⁴ The term is defined in section 85-10 of the GST Act and it is referred to in section 38-570 of the GST Act.

11. The definition of a telecommunication supply is designed to capture the means of communication, but not the content, where that content is a different type of supply. For example, a separate charge for a pay-per-view sporting event is not a telecommunication supply.

12. Subsection 38-570(1) refers to a telecommunication supply made under arrangements for global roaming in Australia.

13. For the purposes of paragraph 38-570(1)(a), a telecommunication supply must enable the use of a portable device⁵ in Australia while the device is linked to:

- an International Mobile Subscriber Identity number in the case of phone roaming; or
- an Internet Protocol address in the case of Internet roaming; or
- another internationally recognised identifier;

containing a home network identity that indicates a subscription to a telecommunication network outside Australia.

14. Portable devices used by subscribers for global roaming in Australia include:

- mobile phones and smart phones;
- tablet computers, personal digital assistants, laptop computers; and
- Universal Serial Bus modems.

They do not include devices that do not use telecommunication networks, for example, walkie talkies and radio communication devices.

15. Under paragraph 38-570(1)(b) the supply must also satisfy the requirements of subsection 38-570(2) or subsection 38-570(3). Subsection 38-570(2) (supply made by non-resident telecommunications supplier), although referred to, is not discussed in this draft Determination.

16. Subsection 38-570(3) applies to the supply made by an Australian resident telecommunication supplier under a global roaming arrangement.

17. The supply must be made by an Australian resident carrier, or carriage service provider or internet service provider and provided to the user in Australia of the portable device described in subsection 38-570(1).⁶

18. The supply must be made to a non-resident that carries on, outside Australia, an enterprise of making telecommunication supplies. The non-resident must not carry on an enterprise of making telecommunication supplies in Australia.⁷

19. For the purposes of subsection 38-570(3), the word *provided* is to be contrasted with the term *made*. We consider that 'provided' in the context of subsection 38-570(3) is used, in relation to a supply covered by section 38-570, to distinguish between the contractual flow of the supply made to a non-resident (a non-resident that carries on an enterprise of making telecommunication supplies outside and not in Australia) and the actual flow of the service or other things provided to the user in Australia of the portable device.

⁵ The term 'portable device' is not expressly defined in the GST Act and therefore takes on its ordinary meaning.

⁶ Paragraphs 38-570(3)(a) and paragraph 38-570(3)(b) of the GST Act.

⁷ Paragraph 38-570(3)(c) of the GST Act.

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20. Further guidance in relation to the Commissioner's view of the distinction between a supply made and a supply provided is contained in Goods and Services Tax Ruling GSTR 2005/6.⁸

Example 1 – Global roaming – overseas visitor in Australia – makes and receives calls – use of Australian telecommunication supplier's network

21. US Co, an American resident company, has a mobile phone international roaming agreement with US Telco, an American telecommunication supplier.

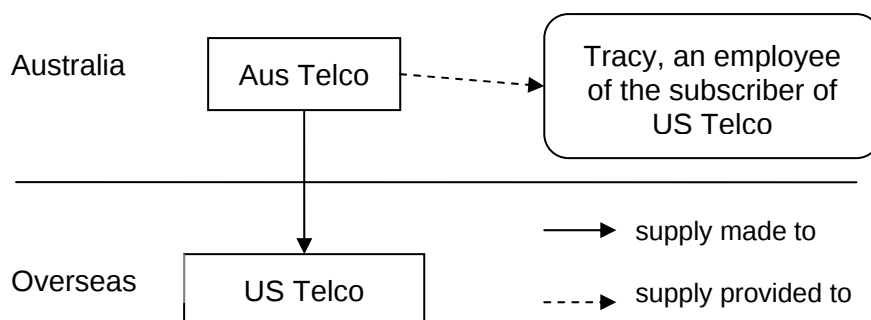
22. Tracy, an employee of US Co, travels to Australia on business. While in Australia, Tracy uses her employer's mobile phone to make calls to business contacts in Australia and outside Australia and receive calls from business contacts in Australia and outside Australia. The calls involve using Aus Telco's (an Australian resident telecommunication supplier) network.

23. Aus Telco has an interconnection agreement with US Telco and charges US Telco an interconnection fee.

24. Tracy uses a portable device in Australia for sending and receiving signals, writing, images, sound and information. The device is linked to an international mobile subscriber number containing a home network identity that indicates a subscription to a telecommunication network outside Australia. The supply meets the requirements of subsection 38-570(1).

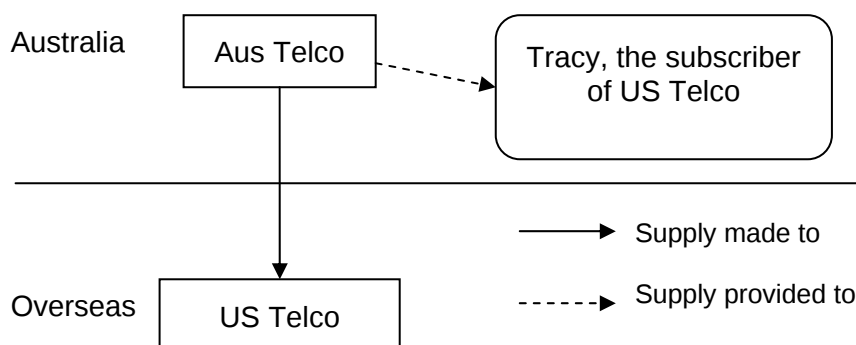
25. Aus Telco is an Australian resident carriage service provider and makes the supply of the interconnection service to US Telco, a non-resident telecommunication supplier. The supply is provided to Tracy, to enable the use of her employer's mobile phone in Australia. The supply meets the requirements of subsection 38-570(3).

26. The supply by Aus Telco to US Telco satisfies subsection 38-570(1) and subsection 38-570(3) and is therefore GST-free.



27. Where Tracy has an international roaming agreement with US Telco for her personal mobile phone and while she is in Australia, she uses that phone rather than her employer's phone, the supply by Aus Telco to US Telco satisfies subsection 38-570(1) and subsection 38-570(3) and is GST-free.

⁸ Goods and Services Tax Ruling GSTR 2005/6 *Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999*. The meaning of 'provided' is explained at paragraphs 220-225.



Example 2 – Global roaming – ancillary call centre services provided in Australia by an Australian telecommunication supplier to an overseas telecommunication supplier

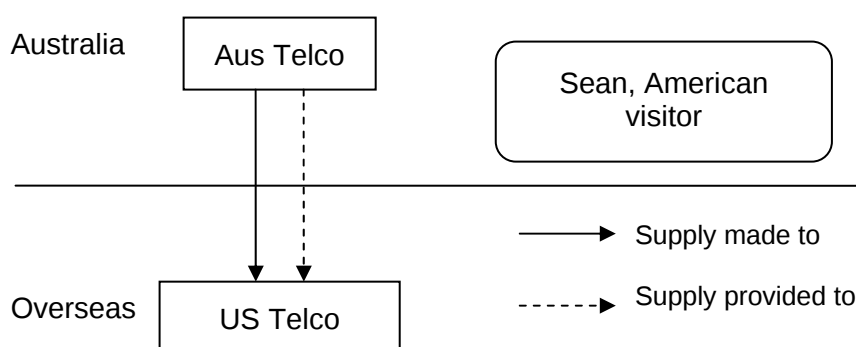
28. Aus Telco and US Telco enter into a global roaming agreement under which their respective customers can roam on the other's mobile network. Under the terms of the agreement each telecommunication supplier also provides an ancillary call centre service (call centre) to help roamers who encounter difficulties in operating the service.

29. Sean, an American visitor to Australia, calls Aus Telco's call centre for assistance with his mobile phone. Aus Telco helps Sean and charges US Telco for the advice under the global roaming agreement.

30. The supply of global roaming satisfies subsection 38-570(1) and subsection 38-570(3) and is therefore GST-free.

31. The call centre services are an ancillary part of the supply of global roaming. The services are provided to facilitate the operation of global roaming by each of the telecommunication suppliers.

32. Call centre services that are ancillary to global roaming services are GST-free under section 38-570.⁹



⁹ The term 'ancillary' is explained in paragraph 55 to 63 of GSTR 2001/8 *Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts*. The GST treatment of a composite supply that contains a dominant part and includes something that is ancillary is discussed in paragraph 17 to 18A of that ruling.

GSTD 2012/D4**Example 3 – Global internet roaming – overseas visitor in Australia – customer of overseas telecommunication supplier – uses Australian telecommunication supplier to access internet**

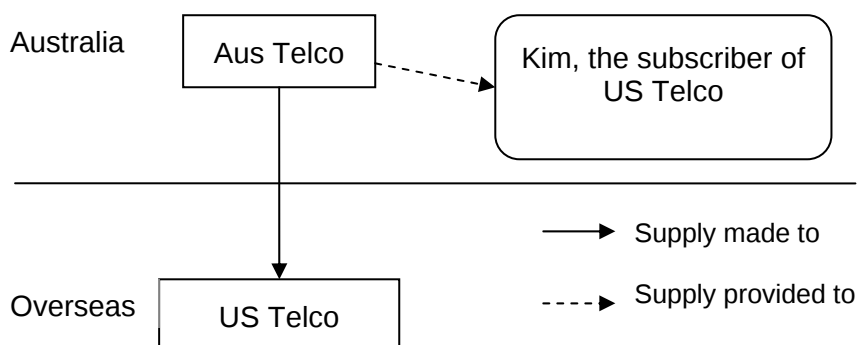
33. Kim, an American resident, has a global internet roaming (GIR) agreement with US Telco. While Kim is in Australia he uses his laptop to connect to GIR to access the internet.

34. Aus Telco has an agreement with US Telco to provide US Telco's customers with access to its network. Aus Telco bills US Telco for the use of its network.

35. Kim uses a portable device in Australia for sending and receiving signals, writing, images, sound and information. The portable device is linked to an Internet Protocol address containing a home network identity that indicates a subscription to a telecommunication network outside Australia. The supply meets the requirements of subsection 38-570(1).

36. Aus Telco is an Australian resident Internet service provider and makes the supply of telecommunication services to US Telco, a non-resident telecommunication supplier. The supply is provided to the subscriber of a non-resident telecommunication supplier, Kim, to enable him to access the internet on his laptop in Australia. The supply meets the requirements of subsection 38-570(3).

37. The supply by Aus Telco to US Telco satisfies subsection 38-570(1) and subsection 38-570(3) and is therefore GST-free.

**Date of effect**

38. 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

39. 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.

40. 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.

Due date:	6 July 2012
Contact officer:	Lisa Webb
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Facsimile:	02 9374 1803
Address:	Australian Taxation Office 12 – 22 Woniora Rd Hurstville NSW 2220

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTR 2005/6; GSTR 2001/8;
GSTD 2012/D1; GSTD 2012/D2;
GSTD 2012/D3

Subject references:

- goods and services tax
- GST free
- non resident entities
- non resident individuals
- telecommunication supply

Legislative references:

- ANTS(GST)A 1999 38-570
- ANTS(GST)A 1999 38-570(1)

ANTS(GST)A 1999 38-570(1)(a)

ANTS(GST)A 1999 38-570(1)(b)

- ANTS(GST)A 1999 38-570(2)

- ANTS(GST)A 1999 38-570(3)

- ANTS(GST)A 1999 38-570(3)(a)

- ANTS(GST)A 1999 38-570(3)(b)

- ANTS(GST)A 1999 38-570(3)(c)

- ANTS(GST)A 1999 85-10

- TAA 1953 Sch 1 105-60

- Broadcasting Services Act 1992 Sch 5

- Telecommunications Act 1997

Other references:

- Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No.3) Bill 2010.
- The Telecommunications Industry Liaison Group – Issues Register

ATO references

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