

GSTD 2014/D3 - Goods and services tax: what is a 'destination outside Australia' for the transport of a passenger by sea under item 1(a) and item 4 of subsection 38-355(1)?

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Draft Goods and Services Tax Determination

Goods and services tax: what is a ‘destination outside Australia’ for the transport of a passenger by sea under item 1(a) and item 4 of subsection 38-355(1)?

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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.

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Ruling

1. A ‘destination’¹ outside Australia² for the purposes of item 1(a) and item 4 of subsection 38-355(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) is a specific physical location outside Australia stopped at by the ship where that location is significant to the passenger having regard to facts and circumstances considered objectively when the transport is purchased.
2. The mere fact that a ship goes to, passes by, or travels through a region outside Australia is not sufficient to establish the transport of a passenger to a ‘destination outside Australia’.
3. Once it is established that the supply of sea transport to a passenger includes a ‘destination outside Australia’, the supply of that sea transport of the passenger on domestic legs of that journey may also be GST-free under item 4.

¹ Statutory terms take their ordinary meaning subject to context and applicable rules of interpretation. The *Macquarie Dictionary* defines ‘destination’ as ‘the predetermined end of a journey or voyage’. The *Oxford Australian Dictionary* defines it as ‘a place to which a person or thing is going’.

² Section 195-1 says that Australia does not include any external Territory. However, it includes an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia. Refer to GSTR 2002/6 paragraphs 98 to 105 for a discussion of the meaning of Australia.

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Specific physical location outside of Australia

4. The expression ‘destination outside Australia’ in the context of item 1(a) and item 4 is being used in a geographical sense to denote a specific physical location outside Australia to which the passenger is going.

5. A supplier will have transported a passenger by sea to a ‘destination outside Australia’ if:

- the ship carrying the passenger stops at a specific physical location outside Australia, and
- that location is **significant** to the passenger having regard to facts and circumstances considered **objectively** when the transport is purchased.

6. A ‘destination outside Australia’ will often be a specific physical location in another country where the ship stops to allow a passenger to leave the ship, even if only for a short period. The objective purpose of stopping at that location may involve but is not limited to sightseeing, staying for a holiday or business activities.

7. A ‘destination outside Australia’ can also be a specific physical location in international waters stopped at by the ship for a purpose significant to the passenger.

8. In summary, a ‘destination outside Australia’ includes specific physical locations outside Australia such as:

- harbours, ports and safe anchorages
- planned stops at specific locations on tourist cruises enabling the passenger to leave the ship for a purpose significant to the passenger
- a specific physical location where the ship stops that is significant to a passenger considered **objectively** when the transport is purchased such as snorkelling at a reef outside Australia.

9. The transport of a passenger that includes within its intended itinerary a stop that is a ‘destination outside Australia’ is not denied that status merely because circumstances prevent the ship going to the location or a passenger does not engage in the intended activity.

Travel to regions outside Australia – no specific location

10. The mere fact that a ship goes to, passes by, or travels through a region outside Australia is not sufficient to establish the transport of a passenger to a ‘destination outside Australia’. For example, travelling through ‘international waters’ where the ship does not stop will not involve a ‘destination outside Australia’.

11. If a ship stops in ‘international waters’ for a purpose unrelated to any specific physical location in those waters (to observe whales, for example), a passenger will not have a ‘destination outside Australia’ for the purposes of item 1(a) nor would they have come ‘from’ a place outside of Australia for the purposes of item 1(b).

12. The following two examples illustrate the principles above.

Example 1 – Cruise to international waters – no destination outside Australia

13. Hannah books a 3 night cruise that is marketed as an opportunity for passengers to view whales. The ship may travel to a number of areas endeavouring to 'follow the whales' wherever they happen to be. The location of the whales is not known at the time of planning the cruise and at the time the cruise is booked. Once found, the ship may occasionally stop for the passengers to see the whales. Hannah boards the cruise in Sydney and disembarks the ship when it returns to Sydney. Hannah has not been transported to a 'destination outside Australia' for the purposes of item 1(a). Hannah's destination is Sydney. Additionally, for the purposes of item 1(b), Hannah has not come 'from' a place outside Australia as Hannah has not come from a particular place. Hannah came from Sydney where she boarded the ship. Item 1(b) is not satisfied.³

Example 2 – Cruise to a reef for passenger to dive – destination outside Australia

14. Jeff is a keen diver and books a diving cruise to explore three reefs in the Coral Sea. The cruise starts in Cairns then travels to the particular reefs which are outside Australia. The passengers, including Jeff, can choose to dive or snorkel over the three reefs. The reefs are specifically identifiable locations which were significant to Jeff when he purchased the ticket. Jeff is transported to a 'destination outside Australia' for the purposes of item 1(a). Once Jeff and other passengers have finished diving or snorkelling over the reefs, they are transported back to Cairns. In these circumstances, Jeff has come 'from' a place outside Australia for the purposes of item 1(b).

Australian domestic legs of passenger's international voyage

15. Once it is established that a sea voyage includes a 'destination outside Australia', the transport of passengers on domestic legs of that voyage may also be GST-free under item 4.

16. Under item 4, the transport of a passenger within Australia by sea is GST-free if:
- the transport is part of a journey by sea from Australia to a destination outside Australia, or from a destination outside Australia to Australia, and
 - the transport is provided by the supplier who transports the passenger to or from Australia.

17. Item 4 concerns domestic legs of an international sea journey to which Item 1(a) or Item 1(b) may apply.

18. Under item 1(a) the transport from the place of departure to a 'destination outside Australia' is GST-free for that part of the passenger's journey. The domestic legs of that journey, prior to the place of departure, are not GST-free under item 1. Item 4 makes the domestic legs prior to the place of departure GST-free. If the supplier satisfies item 1(a), then any sea transport within Australia prior to the place of departure by that same supplier, will also be GST-free under item 4 because this travel forms part of a journey to a 'destination outside Australia'.

³ Section 38-190 of the GST Act may partially apply to the supply of passenger transport to Hannah. Section 38-190 applies to supplies of things other than goods or real property that are for consumption outside Australia.

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19. In a similar context, if item 1(b) is satisfied for a journey from a place outside Australia, then the sea travel within Australia after the first place of arrival will be GST-free under item 4 if supplied by the same supplier who satisfies item 1(b).

20. The following example illustrates the application of item 4 for suppliers of passenger transport by sea.

Example 3 – Cruise to Indonesia and New Zealand

21. *Zoe books a cruise that includes stops at ports in Indonesia and New Zealand. The itinerary is: Brisbane – Darwin – Broome – Lombok (Indonesia) – Perth – Melbourne – Wellington (NZ) – Auckland (NZ) – Brisbane. For Zoe, Lombok, Wellington and Auckland are all places and destinations outside Australia. The supply of the cruise to Zoe is entirely GST-free under subsection 38-355(1) of the GST Act because:*

- *the Broome to Lombok and Melbourne to Wellington legs are GST-free under item 1(a)*
- *the Lombok to Perth and Auckland to Brisbane legs are GST-free under item 1(b)*
- *the Wellington to Auckland leg is GST-free under item 1(c)*
- *the Brisbane to Darwin, Darwin to Broome and Perth to Melbourne legs are GST-free under item 4.*

Note 1: If the supply of passenger transport is not GST-free under section 38-355 of the GST Act other sections of the GST Act may apply, such as section 38-190. Section 38-190 applies to supplies of things other than goods or real property that are for consumption outside Australia.

Note 2: The Commissioner has accepted that a ship (as opposed to a passenger) has a 'destination outside Australia' in the context of item 5 in the table in subsection 38-185(1) of the GST Act when it is undertaking an 'international voyage' for the purposes of the *Customs Act 1901* (Customs Act). The expressions 'ships stores' and 'ship' in that provision are directly linked to definitions in the Customs Act. Expressions in items 1 and 4 of section 38-355 of the GST Act are not linked to the Customs Act provisions and their meaning within those items, therefore, is determined under ordinary rules of statutory interpretation. GSTR 2003/4 considers when 'ships stores' are GST-free under section 38-185.

Date of effect

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

Appendix 1 – Your comments

23. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

24. A compendium of comments is also 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
- publish on the Australian Taxation Office 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:

GSTR 2003/4; GSTR 2002/6; TR 2006/10

Subject references:

- destination outside Australia
- goods and services tax
- GST supply
- GST-free
- international travel
- taxable supply

Legislative references:

- ANTS(GST)A 1999 38-185
- ANTS(GST)A 1999 38-185(1)
- ANTS(GST)A 1999 38-190
- ANTS(GST)A 1999 38-355(1)
- ANTS(GST)A 1999 38-355(1) item 1
- ANTS(GST)A 1999 38-355(1) item 1(a)
- ANTS(GST)A 1999 38-355(1) item 1(b)
- ANTS(GST)A 1999 38-355(1) item 1(c)
- ANTS(GST)A 1999 38-355(1) item 4
- ANTS(GST)A 1999 195-1
- Customs Act 1901 5C

Other references:

- *Macquarie Dictionary* 5th edition (2009).
- *Oxford Australian Dictionary* 2nd edition (2004).

ATO references

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