


GSTD 2012/7A1 - Addendum - Goods and services tax: when are supplies of interconnection services made by an Australian resident telecommunication supplier 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 ?

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Addendum

Goods and Services Tax Determination

Goods and services tax: when are supplies of interconnection services made by an Australian resident telecommunication supplier 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*?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Determination GSTD 2012/7 to reflect amendments made to the *A New Tax System (Goods and Services Tax) Act 1999* by the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* in relation to subsection 38-190(3).

Schedule 2 of the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* (generally about business to business supplies) applies from 1 October 2016.

These amendments ensure that intangible supplies that are made to non-residents not in Australia when the thing supplied is done, are not excluded from table item 2 in subsection 38-190(1) by subsection 38-190(3) when the supplies are provided to an Australian-based business recipient.

GSTD 2012/7 is amended as follows:

1. Paragraph 13

Omit the paragraph; substitute:

13. Under subsection 38-190(3) a supply covered by item 2 is not GST-free if:
- it is a supply under an agreement entered into, whether directly or indirectly, with a non-resident (paragraph 38-190(3)(a)); and
 - the supply is provided, or the agreement requires it to be provided, to another entity in Australia (paragraph 38-190(3)(b)); and
- for a supply other than an input taxed supply, none of the following applies:
- the other entity would be an Australian-based business recipient of the supply, if the supply had been made to the other entity;
 - the other entity is an individual who is provided with the supply as an employee or officer of an entity that would be an Australian-based business recipient of the supply, if the supply had been made to it; or
 - the other entity is an individual who is provided with the supply as an employee or officer of the recipient and the recipient's acquisition of the thing is solely for a creditable purpose and is not a non-deductible expense.

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13A. Subsection 9-26(2) provides that an entity is an Australian-based business recipient of a supply made to the entity if:

- the entity is registered; and
- an enterprise of the entity is carried on in Australia; and
- the entity's acquisition of the thing supplied is not solely of a private or domestic nature.

13B. Subsections 69-5(3) and (3A) define an acquisition as a 'non-deductible expense' if:

- it is not deductible under Division 8 of the *Income Tax Assessment Act 1997* (ITAA 1997) because of provisions of the ITAA 1997 dealing with entertainment expenses and so on; or
- to the extent it is not deductible under Division 8 of the ITAA 1997 because of provisions of the *Income Tax Assessment Act 1936* dealing with meal entertainment or an entertainment facility.

2. Paragraph 19

Omit the last sentence; substitute: 'Where that subscriber is not an Australian-based business recipient and is in Australia, the effect of subsection 38-190(3) is to 'negate' the operation of item 2 so that the supply is not GST-free.'

3. References

- (a) Omit all subject references, including the heading.
- (b) Under Legislative references, insert:
- ANTS(GST)A 1999 38-190(3)(c).

This Addendum applies on and from 1 October 2016.

Commissioner of Taxation

6 March 2019

ATO references

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