

GSTD 2015/2 - Goods and services tax: what is a 'destination outside the indirect tax zone' for the transport of a passenger by sea under item 1(a) and item 4 of subsection 38-355(1)?

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Goods and Services Tax Determination

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

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Ruling

1. A 'destination'² outside the indirect tax zone³ 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 the indirect tax zone stopped at by the ship where that location is objectively significant to the passenger when the transport is purchased having regard to all the facts and circumstances.⁴

¹ From 1 July 2015, the term 'indirect tax zone' has replaced the term 'Australia' in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect.

² 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'.

³ Section 195-1 of the GST Act says that the indirect tax zone 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 the indirect tax zone. Refer to Goods and Services Tax Ruling GSTR 2002/6 paragraphs 98 to 105 for a discussion of the meaning of the indirect tax zone.

⁴ In this context, a destination must be a place that is 'objectively identifiable' when the transport is purchased - cf *CPCF v. Minister for Immigration and Border Protection* [2015] HCA 1 (at [377]).

2. Item 1(a) and item 4 of the GST Act concern the transport of passengers to or from a specific physical location outside the indirect tax zone. A specific physical location outside the indirect tax zone needs to be a location that is objectively significant to the passenger when the transport is purchased having regard to all the facts and circumstances.

3. A passenger does not have to participate in any particular activities at the specific physical location for it to be a passenger's destination outside the indirect tax zone. A specific physical location can be objectively significant to a passenger in situations where the:

- passenger agrees to be transported to the location
- location appears on the passenger's itinerary, or
- passenger disembarks at the location.

4. The mere fact that a ship passes by or travels through a region outside the indirect tax zone is not sufficient to establish the transport of a passenger is to a 'destination outside the indirect tax zone'.

5. Items 1(a) and item 4 do not require a 'destination outside the indirect tax zone' to be a final destination or final place of disembarkation of the passenger.

6. Once it is established that the supply of sea transport to a passenger includes a 'destination outside the indirect tax zone', the supply of that sea transport of the passenger on domestic legs of that journey may also be GST-free under item 4.

Specific physical location outside the indirect tax zone

7. The expression 'destination outside the indirect tax zone' in the context of item 1(a) and item 4 is being used in a geographical sense to denote a specific physical location outside the indirect tax zone to which the passenger is going.

8. A supplier will have transported a passenger by sea to a 'destination outside the indirect tax zone' if:

- the ship carrying the passenger stops at a specific physical location outside the indirect tax zone, and
- that location is objectively significant to the passenger.

9. A 'destination outside the indirect tax zone' will often be a specific physical location in another country where the ship stops to allow passengers to leave the ship, even if only for a short period. The purpose of stopping at that location may involve but is not limited to sightseeing, holidaying or business activities.

10. A 'destination outside the indirect tax zone' can also be a specific physical location in international waters stopped at by the ship for a purpose significant to the passenger.

11. A 'destination outside the indirect tax zone' may include specific physical locations outside the indirect tax zone like:

- harbours, ports and safe anchorages
- a location that enables passengers to disembark, or

- a specific physical location which is objectively significant to the passenger having regard to the factors mentioned in paragraph 3 – for example, snorkelling on a reef outside the indirect tax zone or watching birdlife on an island from a ship.

12. The transport of a passenger that includes within its intended itinerary a stop that is a 'destination outside the indirect tax zone' is not denied that status merely because circumstances prevent the ship going to the location.

Example 1 – Cruise to an island outside the indirect tax zone – destination outside the indirect tax zone

13. Vincent books a cruise from Sydney to a Coral Sea Island (an External Territory) that offers a view of the island's exclusive bird life. The island is a specific physical location that is stopped at by the ship to provide Vincent with an opportunity to bird watch from the ship. Vincent is transported from Sydney to a 'destination outside the indirect tax zone' for the purposes of item 1(a). On the return journey from the island, Vincent has come 'from' a place outside the indirect tax zone for the purposes of item 1(b).

14. Vincent's friend, Deanna, who purchased her ticket merely to enjoy the ship's on-board facilities, similarly satisfies the requirements of item 1(a) and item 1(b) because Deanna agrees to be transported to the location.

Example 2 – Cruise to a reef for passengers to dive – destination outside the indirect tax zone

15. Jeff 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 the indirect tax zone. Jeff chooses this cruise to snorkel and dive on the reefs. Alan chooses this cruise to photograph the reefs and Mary chooses this cruise to accompany Alan.

16. The reefs are specific physical locations in international waters that are stopped at by the ship to provide passengers with an opportunity to dive. All passengers who purchase a ticket have agreed to be taken to the reefs and therefore this location is significant to each passenger. Jeff, Alan and Mary are transported to a 'destination outside the indirect tax zone' for the purposes of item 1(a). Once Jeff and other passengers have finished diving or snorkelling over the reefs, all passengers are transported back to Cairns. In these circumstances, Jeff, Alan and Mary have come 'from' a place outside the indirect tax zone for the purposes of item 1(b). It is not relevant that Alan and Mary do not participate in the diving activities.

Travel to regions outside the indirect tax zone – no specific location

17. The mere fact that a ship passes by or travels through a region outside the indirect tax zone is not sufficient to establish the transport of a passenger to a 'destination outside the indirect tax zone'. For example, travelling through 'international waters' where the ship does not stop will not involve a 'destination outside the indirect tax zone'.

18. The following example illustrates this principle.

Example 3 – Cruise through international waters – no destination outside the indirect tax zone

19. *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 at sea 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 the indirect tax zone' 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 the indirect tax zone as Hannah has not come from a particular place. Hannah came from Sydney where she boarded the ship. Item 1(b) is not satisfied.⁵*

Domestic legs of passenger's international voyage

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

21. Under item 4, the transport of a passenger within the indirect tax zone by sea is GST-free if:

- the transport is part of a journey by sea from the indirect tax zone to a destination outside the indirect tax zone, or from a destination outside the indirect tax zone to the indirect tax zone, and
- the transport is provided by the supplier who transports the passenger to or from the indirect tax zone.

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

23. Under item 1(a), the transport of a passenger from the place of departure to a 'destination outside the indirect tax zone' 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 the indirect tax zone 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 the indirect tax zone'.

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

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

⁵ 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 the indirect tax zone.

Example 4 – Cruise to Indonesia and New Zealand

26. 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 the indirect tax zone. 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), and
- the Brisbane to Darwin, Darwin to Broome and Perth to Melbourne legs are GST-free under item 4.

27. Zoe's friend Felicity books the same cruise as Zoe but only purchases the legs from Perth to Melbourne. Felicity's transportation supply by sea does not include a destination outside the indirect tax zone. The supply to Felicity is not GST-free under section 38-355.

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 the indirect tax zone. Refer to Goods and Services Tax Ruling GSTR 2005/6 and Goods and Services Tax Ruling GSTR 2007/2.

Note 2: The Commissioner has accepted that a ship (as opposed to a passenger) has a 'destination outside the indirect tax zone' 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. Goods and Services Tax Ruling GSTR 2003/4 considers when 'ships stores' are GST-free under section 38-185.

Date of effect

28. 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 Taxation7 October 2015

References

Previous draft:

GSTD 2014/D3

Related Rulings/Determinations:

GSTR 2002/6; GSTR 2003/4; GSTR 2005/6;
TR 2006/10; GSTR 2007/2

Subject references:

- destination outside the indirect tax zone
- 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) item 5
- ANTS(GST)A 1999 38-190

- ANTS(GST)A 1999 38-355
- 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

Cases relied on:

- CPCF v. Minister for Immigration and Border Protection [2015] HCA 1

Other references:

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

ATO references

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