


GSTR 2000/31A - Addendum - Goods and services tax: supplies connected with Australia

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Addendum

Goods and Services Tax Ruling

Goods and services tax: supplies connected with Australia

Goods and Services Tax Ruling GSTR 2000/31 explains the Commissioner's view of when a supply is connected with Australia under section 9-25 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

While GSTR 2000/31 does not address whether a particular supply is a taxable supply, we make reference to, and illustrate by way of examples, the effect of the following provisions:

- section 38-185 – exports of goods that are GST-free;
- section 38-187 – leases or hire of goods for use outside Australia; and
- section 38-190 – supplies of things other than goods or real property, for consumption outside Australia that are GST-free.

Following the issue of GSTR 2000/31 on 30 June 2000, amendments to the GST Act concerning section 38-190, and referred to in that Ruling as proposed amendments, have been enacted. Item 2 of the table in subsection 38-190(1) and subsection 38-190(2) were amended, and subsection 38-190(4) was inserted, by *Indirect Tax Legislation Amendment Act 2000* which received Royal Assent on 30 June 2000 and commenced 1 July 2000.

There have also been later GST Rulings on the treatment of cross-border supplies which specifically address provisions within Divisions 13 and 15 (taxable and creditable importations), section 38-185 (exports of goods) and section 38-190 (supplies of things, other than goods or real property, for consumption outside Australia) that are mentioned in GSTR 2000/31.

This Addendum amends Goods and Services Tax Ruling GSTR 2000/31 to replace references to, and discussion of, amendments to section 38-190, proposed by Indirect Tax Legislation Amendment Bill 2000, with references to and discussion of the amendments as enacted. In this regard, it is noted that the proposed amendments to section 38-190 referred to in GSTR 2000/31 were enacted without change. This Addendum also amends GSTR 2000/31 to refer the reader, where appropriate, to other GST public rulings which explain the application of Divisions 13 and 15, and sections 38-185 and 38-190.

GSTR 2000/31

In particular the Addendum amends paragraph 68 of GSTR 2000/31 referring the reader to GSTR 2004/7, the finalised GST public ruling on how to determine if an entity is in Australia in relation to the supply.

Below we detail each of the amendments made to GSTR 2000/31.

We appreciate that reading GSTR 2000/31 as amended by this Addendum may be difficult. We have, therefore, also compiled a consolidated version of GSTR 2000/31 which incorporates the amendments made by this Addendum.

GSTR 2000/31 is amended as follows:

1. Paragraph 1

Delete the last sentence and replace it with the following amended sentence:

Unless otherwise stated, all legislative references in this Ruling are to the GST Act and all references to an item number are to an item in the table in subsection 38-190(1).

2. Paragraph 15

Add new footnote 7A to the heading 'Export of goods', which immediately precedes paragraph 15. The text of the footnote is as follows:

^{7A} Refer to Goods and Services Tax Rulings GSTR 2002/6 Goods and services tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999*; GSTR 2003/2 Goods and services tax: supplies of goods and services in the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia; and GSTR 2003/4 Goods and services tax: stores and spare parts for international flights and voyages.

3. Paragraph 22

Omit 'Division 38' and substitute 'section 38-190'.

4. Paragraph 23

(a) Omit paragraph 23 and substitute with the following paragraph and table, including the footnote:

23. Items 1 to 5 in the table in subsection 38-190(1) list supplies of things that may be GST-free. The items appear in the table as follows:

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Supplies of things, other than goods or real property, for consumption outside Australia		
Item	Topic	These supplies are GST-free^{9A}
1	Supply connected with property outside Australia	a supply that is directly connected with goods or real property situated outside Australia
2	Supply to non-resident outside Australia	<p>a supply that is made to a non-resident who is not in Australia when the thing supplied is done, and:</p> <p>(a) the supply is neither a supply of work physically performed on goods situated in Australia when the work is done nor a supply directly connected with real property situated in Australia; or</p> <p>(b) the non-resident acquires the thing in carrying on the non-resident's enterprise, but is not registered or required to be registered</p>
3	Supplies used or enjoyed outside Australia	<p>a supply:</p> <p>(a) that is made to a recipient who is not in Australia when the thing supplied is done; and</p> <p>(b) the effective use or enjoyment of which takes place outside Australia;</p> <p>other than a supply of work physically performed on goods situated in Australia when the thing supplied is done, or a supply directly connected with real property situated in Australia</p>
4	Rights	<p>a supply that is made in relation to rights if:</p> <p>(a) the rights are for use outside Australia; or</p> <p>(b) the supply is to an entity that is not an Australian resident and is outside Australia when the thing supplied is done</p>
5	Export of services used to repair etc. imported goods	a supply is constituted by the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia

(b) Insert new footnote 9A as follows:

^{9A} Except to the extent that they are supplies of goods or real property.

5. Paragraph 24

(a) Omit the first sentence of paragraph 24 and substitute with the following new sentence including the footnote:

Subsection 38-190(2) provides that a supply covered by any of the items 1 to 5 in the table in subsection 38-190(1) is not GST-free if it is the supply of a right or option to acquire something the supply of which would be connected with Australia and would not be GST-free.^{9B}

(b) Insert new footnote 9B as follows:

^{9B} Refer to paragraphs 41 to 42 and 143 to 150 of GSTR 2003/8 Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2).

(c) Delete the box which immediately follows paragraph 24 and contains references to proposed amendments.

6. Paragraph 26

(a) Delete 'in subsection 38-190(1)' at the end of the last sentence in paragraph 26.

(b) Add new footnote 9C at the end of paragraph 26. The text of the footnote is as follows:

^{9C} However, such a supply may be GST-free under Subdivision 38-C. (This is the example that is provided in the Supplementary Explanatory Memorandum accompanying the A New Tax System (Indirect Tax and Consequential Amendments) Bill (No. 2) 1999 which inserted subsection 38-190(3). The example refers to the actual 'supply....being made' to students. Consistent with the wording used in subsection 38-190(3) the word 'provided' should have been used instead of 'made'.)

7. Paragraph 26A

(a) Insert the following text as paragraph 26A, including the footnotes:

26A. Subsection 38-190(4) extends the scope of item 3.^{9D}
The subsection 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.

An example of the type of supply to be covered is a supply to an Australian business of a training course to be conducted overseas.^{9E}

- (b) Insert new footnotes 9D and 9E as follows:

^{9D} Refer to GSTR 2004/7 Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*: when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'? when is an 'entity that is not an Australia resident' 'outside Australia when the thing supplied is done'?

^{9E} Refer to Explanatory Memorandum accompanying the Indirect Tax Legislation Amendment Bill 2000 at paragraph 3.27.

- (c) Delete the box which immediately follows paragraph 26 and contains references to proposed amendments.

8. Paragraph 27

Add new footnote 9F to the heading 'Importations', which immediately precedes paragraph 27. The text of the footnote is as follows:

^{9F} Refer to GSTR 2003/15 Goods and services tax: importation of goods into Australia.

9. Paragraph 43

- (a) Delete the first word 'Currently' from the first sentence so that the sentence begins with 'Non-resident'.

- (b) Add two new sentences, including the footnote, immediately following the last sentence in paragraph 43. The new sentences are as follows:

Division 83 (non-residents making supplies connected with Australia) allows a non-resident supplier and the recipient of a supply by the non-resident supplier to agree that the GST liability is to be borne by the recipient where certain requirements are met.^{23A} As these supplies are then disregarded in working out annual turnover, this may mean that the non-resident supplier is not required to register.

- (c) Insert new footnote 23A as follows:

^{23A} These requirements are set out in section 83-5.

- (d) Delete the box which immediately follows paragraph 43 and contains references to proposed amendments.

10. Paragraph 44

Add new footnote 23B to the heading 'Supplies of goods', which immediately precedes paragraph 44. The text of the footnote is as follows:

^{23B} Refer to paragraph 81 of GSTR 2003/7 Goods and services tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

11. Paragraph 51

Add new footnote 23C at the end of paragraph 51. The text of the footnote is as follows:

^{23C} Refer to paragraphs 173 to 187 of GSTR 2002/6 Goods and services tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

12. Paragraph 52

Add new footnote 23D at the end of paragraph 52. The text of the footnote is as follows:

^{23D} Refer to paragraphs 71 to 74 and 221 to 222 of GSTR 2003/15 Goods and services tax: importation of goods into Australia.

13. Paragraph 57

Add new footnote 24A to the heading 'Supplies of real property', which immediately precedes paragraph 57. The text of the footnote is as follows:

^{24A} Refer to paragraphs 82 to 97 of GSTR 2003/7 Goods and services tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

14. Paragraph 67

Omit paragraph 67, including the boxes which contain references to proposed amendments, and substitute with the following paragraph including a reference to GSTR 2003/7:

67. The supply of a service may be GST-free where the requirements in items 1, 2, 3 or 5 in the table in subsection 38-190(1) are satisfied. These items are reproduced above at paragraph 23. To determine, for the purposes of item 1, if a supply is the supply of a service that is 'directly connected with goods or real property' situated outside Australia, or if a supply is the supply of a service that is 'a supply of work physically performed on goods situated in Australia when the work is done' or a supply 'directly connected with real property' situated in Australia for the purposes of items 2 and 3, refer to GSTR 2003/7, Goods and services tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

15. Paragraph 68

Omit paragraph 68 and substitute with the following paragraph:

68. For the purposes of items 2 and 3 the pre-condition that the recipient is not in Australia at the relevant time, requires that the recipient is not in Australia in relation to the supply. To determine, for the purposes of items 2 and 3 (and paragraph (b) of item 4) when a recipient (that is an individual, company, partnership, corporate limited partnership or trust) is in Australia in relation to the supply refer to GSTR 2004/7, Goods and services tax: in the application of items 2 and 3 and paragraph (b) of item 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*:

- when is a 'non-resident' or other 'recipient' of a supply 'not in Australia when the thing supplied is done'?
- when is 'an entity that is not an Australian resident' 'outside Australia when the thing supplied is done'?

16. Paragraph 133

Add new footnote 38A to the heading 'Supply of goods – from Australia', which immediately precedes paragraph 133. The text of the footnote is as follows:

^{38A} Refer to paragraphs 173 to 187 of GSTR 2002/6 Goods and services tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

17. Paragraph 139

Add new footnote 39A to the heading 'Supply of goods – to Australia', which immediately precedes paragraph 139. The text of the footnote is as follows:

^{39A} Refer to paragraphs 71 to 74 and 221 to 222 of GSTR 2003/15 Goods and services tax: importation of goods into Australia.

18. Paragraph 163

Add new footnote 56A to the heading 'Supply of real property', which immediately precedes paragraph 163. The text of the footnote is as follows:

^{56A} Refer to paragraphs 82 to 97 of GSTR 2003/7 Goods and services tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

19. Paragraph 186

(a) Omit paragraph 186 and substitute with the following paragraph:

186. If Account Co performs taxation services in Australia but the recipient of the supply of those services is not an Australian resident and is not in Australia while the taxation service is performed, the supply of those taxation services is GST-free under paragraph (a) of item 2 provided the service is neither a supply of work physically performed on goods situated in Australia when the service is performed nor a supply directly connected with real property situated in Australia. The supply is GST-free under paragraph (b) of item 2 if the non-resident is not in Australia when the taxation service is performed and the non-resident acquires the service in carrying on the non-resident's enterprise, but the non-resident is not registered or required to be registered for GST.

(b) Delete the box which immediately follows paragraph 186 and contains references to proposed amendments.

20. Paragraph 189

(a) Omit paragraph 189 and substitute with the following paragraph:

189. The service provided by Dobe in this example is neither a supply of work physically performed on goods situated in Australia when the service is performed nor a supply directly connected with real property situated in Australia and, therefore, is GST-free under paragraph (a) of item 2 provided that while the research work is done by Dobe, Phillip is not in Australia in relation to the supply.

(b) Delete the box which immediately follows paragraph 189 and contains references to proposed amendments.

21. Paragraph 190

(a) Omit paragraph 190 and substitute the following paragraph:

190. An architect draws up a plan in Australia for renovations of a building in Perth. The recipient is not an Australian resident and is not in Australia while the services of the architect are performed. As the supply of the service is directly connected with real property situated in Australia, the supply of the service is only GST-free under paragraph (b) of item 2 if the non-resident acquires the service in carrying on its enterprise and the non-resident is not registered or required to be registered for GST.

- (b) Delete the box which immediately follows paragraph 190 and contains references to proposed amendments.

22. Paragraph 193

Add new footnote 63A at the end of paragraph 193. The text of the footnote is as follows:

^{63A} Refer to GSTR 2002/6 Goods and services tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of *the A New Tax System (Goods and Services Tax) Act 1999*.

23. Paragraph 194

- (a) Omit paragraph 194 and substitute with the following paragraph including the footnote:

194. The provision of a quality testing service by Contract Co is connected with Australia as the service is performed in Australia (paragraph 9-25(5)(a)). The supply is GST-free under paragraph (a) of item 2 if MSCo is not in Australia when the thing supplied is done and the supply is not a supply of work physically performed on goods situated in Australia when the work is done.^{63B} The supply of the service is GST-free under paragraph (b) of item 2 if MSCo is not in Australia when the thing supplied is done and MSCo acquires the service in carrying on its enterprise and MSCo is not registered or required to be registered for GST.

- (b) Insert new footnote 63B as follows:

^{63B} Refer to paragraphs 68 to 77 of GSTR 2003/7 Goods and services tax: what do the expressions 'directly connected with goods or real property' and 'a supply of work physically performed on goods' mean for the purposes of subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*?

- (c) Delete the box which immediately follows paragraph 194 and contains references to proposed amendments.

24. Paragraph 197

- (a) In the third sentence omit 'subsection 38-190(1)' and substitute 'item 2' and insert 'in relation to the supply' following 'not in Australia'.
- (b) In the fourth sentence delete the words 'goods or'.
- (c) Delete the box which immediately follows paragraph 197 and contains references to proposed amendments.

25. Paragraph 200

Omit the last sentence of paragraph 200 and substitute the following new sentence:

However, as the recipient (Kiwi Bank) is not an Australian resident and has no operations outside of New Zealand (that is, it is not in Australia in relation to the supply when the information services are performed) the supply is GST-free under item 2.

26. Paragraph 206

Add new footnote 63C at the end of paragraph 206. The text of the footnote is as follows:

^{63C} Refer to GSTR 2003/8 Goods and services tax: supply of rights for use outside Australia – subsection 38-190(1), item 4, paragraph (a) and subsection 38-190(2).

27. Paragraph 223

In the first sentence omit 'subsection 38-190(1)' and substitute 'item 4'.

28. Legislative references, etc

(a) Under the heading 'Previous draft' add 'GSTR 2000/31 issued in draft as GSTR 2000/D7'.

(b) Add a new entry as follows:

Related Rulings/Determinations:

GSTR 2000/29; GSTR 2002/6; GSTR 2003/2; GSTR 2003/4;
GSTR 2003/7; GSTR 2003/8; GSTR 2003/15; GSTR 2004/7

(c) Under the heading legislative references add:

- ANTS(GST)A99 Subdiv 9-C
- ANTS(GST)A99 9-10
- ANTS(GST)A99 9-10(4)
- ANTS(GST)A99 11-25
- ANTS(GST)A99 15-20
- ANTS(GST)A99 Subdiv 38-C
- ANTS(GST)A99 38-190(1) Item 1
- ANTS(GST)A99 38-190(1) Item 2
- ANTS(GST)A99 38-190(1) Item 3
- ANTS(GST)A99 38-190(1) Item 4
- ANTS(GST)A99 38-190(1) Item 5
- ANTS(GST)A99 Div 156

- ANTS(GST)A99 156-5

29. Application date

For the purposes of section 37 of the *Taxation Administration Act 1953*, you may rely on this Addendum from 1 December 2004.

GSTR 2000/31 issued on 30 June 2000 and applied from 8 July 1999 (the date of Royal Assent to the GST legislation). You can rely on it from its date of issue.

GSTR 2000/31 as amended by this Addendum applies from 8 July 1999 (the date of Royal Assent to the GST legislation). You can rely on the amendments to GSTR 2000/31 from 1 December 2004.

If you have relied on an ATO view expressed in GSTR 2000/31 prior to the issue of this Addendum, you are protected in respect of what you have done up to the date of issue of this Addendum. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this Addendum. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Amendment to date of effect of GSTR 2000/31

Omit paragraph 8 of GSTR 2000/31 and substitute with the following new paragraphs:

8. This Ruling (as updated to incorporate amendments made on 1 December 2004 by an Addendum to the original Ruling) applies on and from 8 July 1999 (the date of Royal Assent to the GST legislation).

8A. The original Ruling can be relied on from its date of issue on 30 June 2000.

8B. You can rely on the amendments made by the Addendum to the Ruling (and incorporated into the consolidated version) from 1 December 2004, the date of issue of the Addendum.

8C. If you have relied on an ATO view expressed in GSTR 2000/31 prior to the issue of the Addendum, you are protected in respect of what you have done up to the date of issue of the Addendum. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of the Addendum. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

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ATO references

NO: 2003/11684

ISSN: 1443-5160