

GSTR 2000/31A5 - 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

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Goods and Services Tax Ruling GSTR 2000/31 to confirm that it is the Commissioner's view that any supply made by an entity in the course or furtherance of an enterprise it carries on through a permanent establishment in Australia is connected with Australia¹ (and provides examples of the application of that view). The Commissioner has encountered arrangements entered into in response to the Multinational Anti-Avoidance Law, under which it is purported that certain supplies of this kind made by an Australian entity (purportedly through the agency of a foreign entity) are not connected with Australia (see Taxpayer Alert 2016/8 for further detail).

GSTR 2000/31 is amended as follows:

1. Paragraph 84

Omit the paragraph; substitute:

84. For a supply to be connected with Australia under paragraph 9-25(5)(b), a connection must exist between the Australian permanent establishment and the supply. If the supplier carries on an enterprise through a permanent establishment in Australia any supply made in the course or furtherance of this enterprise will be a supply made through the permanent establishment for the purposes of paragraph 9-25(5)(b). This will be the case even if the supply can also be said to be connected with a place of business in another country.

¹ This Addendum uses the term 'connected with Australia' instead of 'connected with the indirect tax zone' for consistency with the wording in GSTR 2000/31.

2. Paragraph 223

After the paragraph insert new Example 38A:

Example 38A – Supply made by Australian resident through an offshore agent

223A. Friday Pty Ltd, an Australian resident company, sells software to Australian customers under an exclusive distribution agreement it has with its parent entity. It has premises and employees in Australia. Friday Pty Ltd appoints Offshore Co, a non-resident company, as its general agent. Following its appointment, Offshore Co handles, on behalf of Friday Pty Ltd, most aspects of the supplies made to Australian customers by (amongst other things) entering into contracts with the customers (on behalf of Friday Pty Ltd) and distributing software via offshore servers. Friday Pty Ltd continues to carry on related marketing and support activities in Australia.

223B. The supply of software is connected with the enterprise carried on by Friday Pty Ltd in Australia. Friday Pty Ltd has a fixed and permanent presence in Australia through which it carries on the enterprise of selling software to Australian customers. The software sold by Friday Pty Ltd is sold through this enterprise. The supplies are therefore connected with Australia under paragraph 9-25(5)(b). The fact that Offshore Co may perform aspects of the supply on behalf of Friday Pty Ltd outside of Australia does not alter this outcome.

3. Paragraph 224

Omit the paragraph and the example heading; substitute:

Example 39 – Supply made through permanent establishments in and outside Australia

224. Aus Co, an Australian company, has a branch in Taiwan. Aus Co provides immigration consultancy services and its management is based in Australia. The Taiwanese branch does not account separately from the head office, and there is regular collaboration between employees in Taiwan and those in Australia. All administrative functions of Aus Co are performed centrally in Australia. Senior management are also based in Australia. At times, employees in the Australian office will refer work to the Taiwanese branch and vice versa.

224A. The Taiwan branch undertakes to prepare and provide an immigration report to a client in Australia. The supply made by Aus Co is connected with Australia under paragraph 9-25(5)(b) because there is a sufficient connection between the enterprise carried on by Aus Co in Australia and the supply of immigration services. Accordingly, the supply by Aus Co will be subject to GST if the other requirements of section 9-5 are met (note that if Aus Co had instead provided services to a local Taiwanese customer, or another non-resident of Australia, the supply by Aus Co may be GST-free under section 38-190).

Example 39A – Supply made through a permanent establishment outside Australia

224B. Foreign Co, a non-resident bank, operates branches in a number of countries including Australia and Singapore. Each of its branches is separately registered as a branch with local regulators, maintains separate accounts, operates from its own premises, has its own employees and on-site management, and is an enterprise in its own right. Michelle, an Australian resident, opens an account with the Singaporean branch of Foreign Co. The supplies that Foreign Co makes to Michelle in relation to this account are not connected with Australia under paragraph 9-25(5)(b). This is because, even though Foreign Co is carrying on an enterprise through a permanent establishment in Australia, the enterprise carried on through the Australian branch is sufficiently distinct from the enterprise carried on by Foreign Co through its Singaporean enterprise.

4. Paragraph 225B (heading)

Omit 'Example 39A' substitute 'Example 39B'

5. Paragraph 253

Omit:

Example 39 – Supply made through a permanent establishment outside Australia	224
Example 39A – Supply of rights or options to things connected with Australia	225B

GSTR 2000/31

Insert:

<i>Example 38A – Supply made by Australian resident through an offshore agent</i>	223A
<i>Example 39 – Supply made through permanent establishments in and outside Australia</i>	224
<i>Example 39A – Supply made through a permanent establishment outside Australia</i>	224B
<i>Example 39B – Supply of rights or options to things connected with Australia</i>	225B

This Addendum applies on and from its date of issue.

Commissioner of Taxation

10 August 2016

ATO references

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