


GSTR 2002/2A4 - Addendum - Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions

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Addendum

Goods and Services Tax Ruling

Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions

This Addendum amends Goods and Services Tax Ruling GSTR 2002/2 to reflect amendments to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), which were made since the Ruling was issued. In particular, the Addendum updates GSTR 2002/2 for consequential amendments made to Division 84 of the GST Act due to an amendment that inserted paragraph 9-25(5)(c) into the GST Act. Paragraph 9-25(5)(c) of the GST Act ensures that a supply is connected with Australia if it is the supply of a right or option to acquire another thing and the supply of that other thing would be connected with Australia. The amendment applies to supplies made on or after 1 October 2005.

The Addendum also makes further minor amendments to GSTR 2002/2 to cross reference GST public rulings that have since issued; correct other minor non-technical errors; and update the references section of GSTR 2002/2.

GSTR 2002/2 is amended as follows:

1. Paragraph 5

Omit the paragraph; substitute:

5. This Ruling adopts interpretations of the GST Act expressed in other GST public rulings. It also refers to a number of other GST public rulings where it is envisaged that further guidance or more detail on a particular issue may be required. Although these rulings may be specifically expressed not to apply to financial supplies, the general principles in these rulings provide guidance that may apply in the financial supplies context. Other relevant public rulings include:

- GSTR 2000/11 Goods and services tax: grants of financial assistance;
- GSTR 2000/17 Goods and services tax: tax invoices;
- GSTR 2000/24 Goods and services tax: Division 129 – making adjustments for changes in extent of creditable purpose;

- GSTR 2000/31 Goods and services tax: supplies connected with Australia;
- GSTR 2000/37 Goods and services tax: agency relationships and the application of the law;
- GSTR 2001/6 Goods and services tax: non-monetary consideration;
- GSTR 2001/8 Goods and services tax: apportioning the consideration for a supply that includes taxable and non-taxable parts;
- GSTR 2002/5 Goods and services tax: when is a 'supply of a going concern' GST-free?;
- GSTR 2003/9 Goods and services tax: financial acquisitions threshold;
- GSTR 2004/1 Goods and services tax: reduced credit acquisitions;
- GSTR 2006/3 Goods and services tax: determining the extent of creditable purpose for providers of financial supplies; and
- GSTR 2006/4 Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.

2. Paragraph 6A

Omit first sentence; substitute:

Changes made to this Ruling by Addenda that issued on 25 February 2004, 15 August 2007, 5 March 2008 and 17 June 2009 have been incorporated into this version of the Ruling.^{1A}

3. Footnote 10

Omit the text; substitute:

Subsection 70-5(1A).

4. Footnote 11

Omit the text; substitute:

Explanatory Statement to the A New Tax System (Goods and Services Tax) Regulation 1999, Attachment E, page 1.

^{1A} Refer to each Addendum to see how that Addendum amends this Ruling.

5. Paragraph 18

Omit the paragraph; substitute:

18. Determining the extent of your creditable purpose and making adjustments when your creditable purpose changes is dealt with in Goods and Services Tax Rulings GSTR 2000/24, GSTR 2006/3 and GSTR 2006/4. You should refer to these Rulings for guidance on how to work out your entitlement to input tax credits and how to make adjustments when your actual use is different to your intended use.

6. Paragraphs 34 and 38

Insert a full stop at the end of the last sentence.

7. Paragraph 37

Omit 'section 9-10(4)'; substitute 'subsection 9-10(4)'.

8. Paragraph 44

Omit the paragraph; substitute:

44. See Goods and Services Tax Rulings GSTR 2002/5, GSTR 2006/3, GSTR 2006/4, GSTR 2008/1, Miscellaneous Taxation Ruling MT 2006/1 and Goods and Services Tax Determination GSTD 2006/6 for an explanation of what is meant by 'carrying on an enterprise' and 'in the course or furtherance of an enterprise'.

9. Paragraph 49

Omit the paragraph; substitute:

49. Therefore, in determining whether the provision, acquisition or disposal of the interest is connected with Australia the tests contained in subsection 9-25(5) are relevant. These tests are alternatives, so that the provision, acquisition or disposal of an interest may be connected with Australia if:

- the thing is done in Australia (see paragraphs 51 to 66 of this Ruling); or
- the provision, acquisition or disposal of the interest is made through an enterprise that the supplier carries on in Australia (see paragraphs 67 to 77 of this Ruling);³³ or

³³ Subsection 9-25(6).

- neither of the above two tests apply and the supply is of a right or option to acquire another thing and the supply of that other thing would be connected with Australia (see paragraph 77A of this Ruling).

In the context of financial supplies, the supplier is the provider, acquirer, or disposer of the financial interest.

10. Paragraph 74

At the end of the paragraph, insert the footnote:

^{38A} Paragraph 9-25(5)(c) does not apply.

11. Paragraph 75

Omit the paragraph; substitute:

75. Where a supply is not connected with Australia because it is not done in Australia, is not made through an enterprise the supplier carries on in Australia and is not of a right or option to acquire another thing the supply of which would be connected with Australia, the acquisition-supply may still be connected with Australia if the acquisition is made through an enterprise the acquirer carries on in Australia. The test in subsection 9-25(5) is applied to both the supply and the acquisition-supply.

12. Paragraph 77

After the paragraph; insert:

Supply is of a right or option to acquire another thing and the supply of the other thing would be connected with Australia

77A. As explained at paragraph 71 of this Ruling, the supplier of a financial supply will be the provider, acquirer or disposer of the financial interest. A financial supply made by a supplier, that is not done in Australia and is not made through an enterprise that is carried on in Australia, will be connected with Australia if it is the supply of a right or option to acquire another thing and the supply of that other thing would be connected with Australia. However, a supply of a service or anything other than goods or real property to an offshore recipient may be GST-free under section 38-190 (see paragraphs 144 to 170 of this Ruling).

13. Paragraph 99

Omit 'moneyunless'; substitute 'money unless'.

14. Footnote 47

Omit 'section 9-10(4)'; substitute 'subsection 9-10(4)'.

15. Footnote 52

Omit the text; substitute:

Explanatory Statement to the A New Tax System (Goods and Services Tax) Regulation 1999, Attachment B, page 1.

16. Paragraph 144

At the end of the paragraph, insert the sentence:

Supplies that satisfy the circumstances described in any of items 2 to 4 may not be GST-free if they fall within the exclusion in subsection 38-190(2A).^{54A}

17. Paragraph 147

Omit; substitute:

147. A supply to a non-resident recipient is GST-free under subsection 38-190(1) if it is a supply made to a non-resident who is not in Australia when the thing supplied is done^{65A} and:

- 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;^{65B} or
- the non-resident acquires the thing in carrying on the non-resident's enterprise, but is not registered or required to be registered.⁶⁶

18. Paragraph 148

Omit the paragraph; substitute:

148. However, the supply is not GST-free if either subsection 38-190(2), (2A) or (3) applies to that supply.

^{54A} The following GST Rulings discuss the application of section 38-190: GSTR 2003/7; GSTR 2003/8; GSTR 2004/7; GSTR 2005/6 and GSTR 2007/2.

^{65A} See GSTR 2004/7.

^{65B} See GSTR 2003/7.

⁶⁶ Subsection 38-190(1), item 2. See GSTR 2004/7.

19. Paragraph 156

Omit the paragraph; substitute:

156. A supply is also GST-free where it is a supply:

- that is made to a recipient who is not in Australia when the thing supplied is done;^{67A} and
- the effective use or enjoyment of which takes place outside Australia,^{67B}

other than 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.⁶⁸ However, the supply will not be GST-free if subsection 38-190(2) or (2A) applies to the supply.

20. Paragraph 158

Omit the paragraph; substitute:

158. Under item 4 of subsection 38-190(1) a supply in relation to rights is GST-free if:

- the rights are for use outside Australia;^{68A} or
- the supply is to an entity that is not an Australian resident and is outside Australia when the thing supplied is done.^{68B}

21. Paragraph 165

At the end of the third last sentence, insert the footnote:

^{68C} Paragraph 9-25(5)(c) does not apply.

22. Paragraph 166

At the end of the paragraph, insert the footnote:

^{68D} See also the following paragraphs in GSTR 2004/7: paragraphs 114 to 118 (individuals); paragraphs 119 to 126 (companies); paragraphs 127 to 157 (partnerships); paragraphs 158 to 168 (corporate limited partnerships); paragraphs 169 to 174 (trusts).

^{67A} See GSTR 2004/7.

^{67B} See GSTR 2007/2.

⁶⁸ Subsection 38-190(1), item 3. See GSTR 2003/7.

^{68A} See GSTR 2003/8.

^{68B} See GSTR 2004/7.

23. Paragraph 169

At the end of the paragraph, insert the footnote:

^{68E} See the following paragraphs in GSTR 2004/7:
paragraphs 181 to 191; paragraphs 201 to 228 (individuals);
paragraphs 229 to 379 (companies); paragraphs 380 to 409
(partnerships); paragraphs 410 to 419 (corporate limited
partnerships); paragraphs 420 to 438 (trusts).

24. Paragraph 170

At the end of the paragraph, insert the footnote:

^{68F} See GSTR 2005/6.

25. Paragraph 171

Omit the paragraph; substitute:

171. If a supply is not connected with Australia, it will not be a taxable supply under section 9-5 of the GST Act. However, the supply of a thing (other than goods or real property) that is not connected with Australia or is connected with Australia because of paragraph 9-25(5)(c) will be a taxable supply under Division 84 if:

- the recipient of the supply acquires the thing supplied solely or partly for the purpose of an enterprise that the recipient carries on in Australia, but not solely for a creditable purpose;
- the supply is for consideration; and
- the recipient is registered, or required to be registered.⁶⁹

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

26. Paragraph 175

At the end of the paragraph, insert the footnote:

^{69A} Paragraph 9-25(5)(c) does not apply.

27. Footnote 71

Omit the text; substitute:

Paragraph 84-5(1)(e).

⁶⁹ Section 84-5.

28. Paragraph 179

Omit the paragraph; substitute:

179. The acquisition of some financial interests by a financial supply provider will not be connected with Australia because they are not 'done' in Australia, are not made through an enterprise the financial supply provider carries on in Australia, and they are not the acquisition of a right or option to acquire another thing the supply of which would be connected with Australia. In these circumstances, Division 84 would operate to treat those financial interests as taxable.^{71A} The GST regulations operate so that if Division 84 applies to a financial interest, which would be a financial supply apart from the fact it is not connected with Australia and the supplier is not registered or required to be registered,⁷² it is a financial supply.⁷³

29. Footnote 82

Omit the text; substitute:

Subsection 70-5(1). See Goods and Services Tax Ruling GSTR 2004/1 which discusses reduced credit acquisitions.

30. Paragraph 198

Omit 'GSTR 2000/22'; substitute 'GSTR 2006/3'.

31. Paragraph 292

- (a) Omit 'B49'; substitute 'B48'.
- (b) Omit '40-5.09'; substitute '40-5.09(3)'.

32. Paragraph 301

Insert:

Supply is of a right or option to acquire another thing and the supply of the other thing would be connected with Australia

77A

^{71A} Division 84 also applies if a supply is connected with Australia because it is the supply of a right or option to acquire another thing the supply of which would be connected with Australia (that is, it is connected with Australia under paragraph 9-25(5)(c)).

⁷² This is separate to the issue that an acquisition on a strict reading of subsection 9-25(5) cannot be connected with Australia.

⁷³ Subregulation 40-5.09(2). Subregulation 40-5.09(2) also recognises that in these circumstances the supplier need not register, or may be unable to register, for GST. For example, the entity does not carry on an enterprise in Australia.

33. Related Rulings/Determinations

(a) Insert:

GSTR 2003/7
GSTR 2003/8
GSTR 2003/9
GSTR 2004/1
GSTR 2004/7
GSTR 2005/6
GSTR 2007/2
GSTR 2006/3
GSTR 2006/4
MT 2006/1
GSTD 2006/6

(b) Omit:

GSTR 2000/15
GSTR 2000/22
MT 2000/1
GSTD 2000/8

34. Legislative References

Insert:

- ANTS(GST)A99 9-25(5)(c)
- ANTS(GST)A99 38-190(2A)
- ANTS(GST)A99 84-5(1)(e)

35. Other References

Insert:

Other references:

- Explanatory Statement to the A New Tax System (Goods and Services Tax) Regulation 1999

This Addendum explains our view of the law as it applied from 1 October 2005. You can rely upon this Addendum on and from its date of issue for the purpose of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. If this Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, this Addendum prevails. However, if you have relied on a previous ruling (including the ruling this Addendum amends), you are protected in respect of what you have done up to the date of issue of this Addendum.

Commissioner of Taxation

17 June 2009

ATO references

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