



# ***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***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *28 February 2003*

## Goods and Services Tax Ruling

### 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

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#### *Preamble*

*This document is a ruling for the purposes of section 37 of the **Taxation Administration Act 1953**. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

#### **What this Ruling is about**

1. This Ruling is about the operation of item 5 in the table in subsection 38-190(1) and item 6 in the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act'). It explains the requirements for a supply to be GST-free under these items.
2. Item 5 provides for the GST-free supply of services constituting the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia. Item 6 provides for the GST-free supply of goods in the course of such repair, renovation, modification or treatment.
3. In particular, this Ruling sets out the Commissioner's views on:
  - (a) when goods are from outside Australia and have a destination outside Australia,
  - (b) when a supply constitutes the repair, renovation, modification or treatment of goods,
  - (c) when a supply of goods is in the course of repairing renovating, modifying or treating imported goods, and
  - (d) the types of documents a supplier needs as evidence demonstrating that the requirements for a GST-free supply are met.
4. All legislative references in this Ruling are to the GST Act, unless otherwise stated.

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## Date of effect

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5. This Ruling explains our view of the law as it applied from 1 July 2000. You can rely upon this Ruling as and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

6. If this ruling conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this Ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

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## Context

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7. A supply of goods is a taxable supply if the supply is connected with Australia and the other requirements of section 9-5 are met. However, the supply is not a taxable supply to the extent that it is GST-free.

8. Subdivision 38-E provides for GST-free supplies of exports and other supplies for consumption outside Australia.

9. Goods that are exported can be supplied GST-free where the requirements of one of the items in the table in subsection 38-185(1) are met. Supplies of things, other than goods or real property, for consumption outside Australia are GST-free where the specific requirements of one of the items in the table in subsection 38-190(1) are met.

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## Ruling

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10. Item 6 in the table in subsection 38-185(1) covers the supply of goods in particular circumstances. Item 5 in the table in subsection 38-190(1) covers a supply of services in the same circumstances. The two items complement each other to provide the requirements for GST-free supplies of goods and services in repairing, renovating, modifying or treating goods from outside Australia, whose destination is outside Australia.

11. 'Australia' is defined in section 195-1. Australia includes all the land territory (except the external territories) of Australia, the

coastal sea of Australia and installations described in section 5C of the *Customs Act 1901* ('the Customs Act').

12. The requirement that goods are from outside Australia with a destination outside Australia must be satisfied at the time of the repair, renovation, modification or treatment (or when goods are supplied in the course of repair, renovation, modification or treatment).

Accordingly, the place the goods are from, and the destination of the goods, is tested when the supply is made.

13. Goods satisfy the description of 'goods from outside Australia whose destination is outside Australia' at the relevant time, if the goods have arrived in Australia on a 'predetermined journey' to a place outside Australia, and the predetermined journey has not been broken, or brought to an end in Australia.

14. Goods that will meet the requirement include:

- goods sent from overseas directly to a repairer in Australia for the purpose of being repaired and returned overseas, and
- ships or aircraft that have arrived in Australia on a predetermined journey to a place outside Australia; and:
  - parts or components of the ship or aircraft,
  - goods on board that move with the ship or aircraft (for example, equipment, fixtures and fittings), and
  - cargo that has the same predetermined journey.

15. However, goods brought to Australia for another purpose, such as to be used, are not goods from outside Australia with a destination outside Australia. A journey of goods to Australia so that the goods can be used in Australia, ends when the goods reach the place where they are used. A new journey may then commence to return the goods to the overseas location.

16. In circumstances where the goods are used before being repaired, renovated, modified or treated, the goods are from the place in Australia where they were most recently used, and therefore no longer retain the character of goods 'from outside Australia'. Alternatively, where it is intended that the goods will be used after the repair, renovation, modification or treatment, the destination of the goods is the place in Australia at which the goods will be used, such that the goods no longer satisfy the description 'of goods whose destination is outside Australia.'

17. A ship or aircraft that arrives in Australia for the purpose of, or including the purpose of, visiting various locations in Australia, is

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regarded as making different journeys when it travels to those locations. For example, a yacht arriving in Australia which is granted Customs permission<sup>1</sup> to visit various locations for recreational purposes (for example, sightseeing or fishing), ends its journey from outside Australia, and commences a new journey to the various locations in Australia. Therefore the yacht is not goods 'from outside Australia whose destination is outside Australia.'

18. However, goods that are a ship or aircraft on a predetermined journey from outside Australia to a place outside Australia, do not end that journey as a result of being used in Australia provided the only use of the ship or aircraft is for that journey. For example, the use of an aircraft in scheduled flights from Singapore to Sydney, then to Melbourne and return is not use which would break the predetermined journey.

19. Actual exportation of the goods within a reasonable time after the repair, renovation, modification or treatment, will be evidence indicating that the goods had the required destination outside Australia, when the repair, renovation, modification or treatment is undertaken.

20. The terms 'repair', 'renovate', 'modify' and 'treat' and their derivatives are not defined in the GST Act and therefore take their ordinary meanings. These are discussed further in the Explanations section of this Ruling at paragraphs 33 to 45.

21. A supply of goods is 'in the course of' repairing, renovating, modifying or treating other goods (the imported goods), if it is made by the person who is carrying out a repair, renovation, modification or treatment of the imported goods. Suppliers can carry out a repair, renovation, modification or treatment by physically carrying out the process themselves or through their employees, or by engaging another person, such as a subcontractor, to carry it out for them. In this case, the supplies made by both the subcontractor and the head contractor are in the course of repairing, renovating, modifying or treating the other goods. Several persons may be carrying out such a process in respect of the same imported goods.

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<sup>1</sup> Permission is granted under section 58 of the *Customs Act 1901*. The permission is colloquially known as a 'cruising permit' and is usually granted for a set period of time. Approval under section 58 could also be granted in respect of an aircraft.

22. Under item 6 in subsection 38-185(1), a supply of goods is only GST-free if :

- the goods are attached to, or become part of, the imported goods, or
- the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the imported goods.

23. Therefore, the supplier of the goods must attach the goods or use them in the process being applied to the imported goods. Goods are not supplied in the course of repair, renovation, modification or treatment, if they are supplied to another person who attaches them to the imported goods.

24. To demonstrate that a supply is GST-free, the supplier must have sufficient documentary evidence<sup>2</sup> to show that the goods being repaired, renovated, modified or treated are from outside Australia and have a destination outside Australia. The evidence must be sufficient to reasonably satisfy an independent person, with skills in import and export procedures and accounting, that the requirements of the provision are met.

25. To demonstrate that goods are from outside Australia, the supplier will require documents evidencing importation. Documents evidencing physical export within a reasonable time after the supply are, in the absence of contrary evidence, sufficient to demonstrate the destination of the goods when the supply is made. It is not a requirement that the supplier imports and exports the goods, nor is it a requirement that the same person imports and exports the goods.

26. Where a supplier does not have evidence of physical export, the supplier will need other evidence to demonstrate that the destination of the imported goods was outside Australia. This could include temporary import documents issued on arrival of the goods in Australia, and other information provided by the recipient of the supply or the owner of the goods. Documentary evidence is discussed in more detail at paragraphs 92 to 108 of the Explanations section of this Ruling.

27. If suppliers treat their supplies as taxable because they are unable to obtain sufficient evidence when they make their supplies, but they later gain sufficient evidence to demonstrate that the supply is GST-free, the supplier can obtain a refund of the GST paid by lodging an amended BAS, provided the supplier has reimbursed all customers for the overpaid amount. Alternatively, suppliers, in certain circumstances, may recover the overpaid amount in a subsequent

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<sup>2</sup> Section 70 of the *Taxation Administration Act 1953*.

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BAS.<sup>3</sup> The Commissioner may allow a refund in other circumstances in accordance with the principles in Practice Statement 2002/12.<sup>4</sup>

## Explanations (this forms part of the Ruling)

28. Section 9-5 provides that a supply is not a taxable supply to the extent that it is GST-free or input taxed. Subdivision 38-E provides for GST-free supplies in the context of goods for export and other supplies for consumption outside Australia.

29. Section 38-185 sets out a range of situations in which goods for export can be supplied GST-free. Section 38-190 sets out the circumstances in which things, other than goods or real property, for consumption outside Australia can be supplied GST-free.

30. For a supply of goods to be GST-free under section 38-185, the supply must satisfy the requirements of one of the seven items listed in the table in subsection 38-185(1). Item 6 is considered below. For a supply of anything other than goods or real property to be GST-free under section 38-190, one of the five items listed in the table in subsection 38-190(1) must apply. Item 5 is also considered below.

31. Item 5 of the table in subsection 38-190(1) provides that:

Export of services used to repair etc imported goods	a supply that is constituted by the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia.
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32. Item 6 of the table in subsection 38-185(1) provides that:

Export of goods used to repair etc imported goods	<p>a supply of goods in the course of repairing, renovating, modifying or treating other goods from outside Australia whose destination is outside Australia, but only if:</p> <p>(a) the goods are attached to, or become part of, the other goods; or</p> <p>(b) the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the other goods.</p>
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<sup>3</sup> See Fact Sheet 'Correcting GST Mistakes - Revised Fact Sheet (03/2002)'

<sup>4</sup> ATO Practice Statement 2002/12: Refunds of GST incorrectly included in the price of non-taxable supplies.

***The meaning of ‘repairing, renovating, modifying or treating’***

33. Both items discussed in this Ruling require there to be a repair, renovation, modification or treatment. The terms ‘repair’, ‘renovation’, ‘modification’ and ‘treatment’, and their derivatives, are not defined in the GST Act and therefore take their ordinary meaning.

34. The ordinary meaning of ‘repair’ is ‘to restore to a good or sound condition after decay or damage; mend’.<sup>5</sup> Repairing includes replacing defective or worn parts or re-attaching parts which have become detached.

35. The ordinary meaning of ‘renovate’ is ‘to make new or as if new again; restore to good condition; repair’.<sup>6</sup> Renovation changes the character or enhances efficiency of function, while a repair merely restores the character or efficiency of function.<sup>7</sup>

36. The ordinary meaning of ‘modify’ is ‘to change somewhat the form or qualities of; alter somewhat’.<sup>8</sup>

37. The ordinary meaning of ‘treat’ is ‘to subject to some agent or action in order to bring about a particular result eg to treat a substance with an acid’.<sup>9</sup> Processes such as cleaning, sterilising, waterproofing or rust proofing goods are examples of treating goods.

38. The use of the word ‘whose’ in the items, where the legislation refers to ‘goods from outside Australia *whose* destination is outside Australia’ [emphasis added] indicates that the exported goods should be essentially the same goods as the imported goods. The imported goods must still be recognisable when exported. In the Commissioner’s view, this excludes the process of manufacture from the provision.

39. The ordinary meaning of manufacture is ‘the making of goods or wares by manual labour or machinery, especially on a large scale; the making of anything’.<sup>10</sup>

40. Manufacture commonly results in a change in the identity of goods. Their essential character is altered in such a way that they can no longer be considered to be the same goods. The original goods being components, ingredients, raw materials or similar, are subsumed into new goods with their own identity.

41. It follows that a process which may appear to be, for example, a treatment, or renovation, is not covered by the items if the process amounts to the manufacture of new goods. In this context, the terms ‘treating’ and ‘renovating’ are limited to processes of the same kind or

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<sup>5</sup> Macquarie Dictionary 3<sup>rd</sup> edition.

<sup>6</sup> Macquarie Dictionary 3<sup>rd</sup> edition.

<sup>7</sup> See generally Taxation Ruling TR 97/23 ‘Income tax: deductions for repairs.’

<sup>8</sup> Macquarie Dictionary 3<sup>rd</sup> edition.

<sup>9</sup> Macquarie Dictionary 3<sup>rd</sup> edition.

<sup>10</sup> Macquarie Dictionary 3<sup>rd</sup> edition.

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nature as repairing and modifying, neither of which contemplates the creation of completely new or different goods.

42. In Subdivision 38E, repair, renovation, modification or treatment is a process applied to existing goods which may involve some change in the nature, form or condition of the existing goods, the substance of which remains unchanged. That is, the essential or fundamental character of the goods is the same. The imported goods retain their own identity.

43. Where item 5 in subsection 38-190 and item 6 in subsection 38-185(1) do not apply because new goods are created, the requirements of another item may be met. For example, a supplier contracted to manufacture new goods using components provided by the recipient, may make a supply of goods to the recipient. This supply is GST-free if the supplier exports the goods and the other requirements of item 1 in subsection 38-185(1) are met. Alternatively, a supply of services made to a non-resident who is not registered or required to be registered, may be GST-free if the requirements of item 2 in subsection 38-190(1) are met.<sup>11</sup>

***Example 1 – Imported goods different to goods that are exported.***

44. *A foreign chemical company sends chemicals in a powder form to an Australian resident pharmaceutical manufacturer. The Australian company uses the chemical powder along with other, locally produced active ingredients, additives and bonding agents to produce a headache medication in a tablet form. The tablets are sent in bulk to the foreign company which is then charged for the processing service. The powder has been subsumed into new or different goods (the tablets). The processing that the chemical undergoes is more complex than mere ‘treatment’ or ‘treating’ in the context in which those expressions are used in items 5 and 6, as it changes the fundamental nature of the goods, causing them to lose their identity. The headache tablets sent from Australia are different goods to the chemical powders imported. Item 5 in subsection 38-190(1) does not apply to the supply of the process. Item 6 in subsection 38-185(1) also does not apply to the supply of goods (other active ingredients, additives and bonding agents) in the course of transforming the powder to headache tablets. However, depending on the circumstances of the arrangement, the supply of headache tablets may be a GST-free supply of goods under item 1 in subsection 38-185(1) or Subdivision 38B. Alternatively, if there is no supply of goods, item 2 in subsection 38-190(1) may apply if the non-resident*

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<sup>11</sup> Assuming subsection 38-190(2) does not apply to deny GST-free status to the supply.

*recipient acquires the processing services in the course of an enterprise, and is not registered or required to be registered.*

*Alternative view*

45. There is an alternative view that, even if the goods from outside Australia are subsumed into new or different goods that have been produced as a result of a 'treatment', the items apply. It is of no consequence that the imported goods have changed their essential or fundamental character. Under this alternative view, item 6 in subsection 38-185(1) or item 5 in subsection 38-190(1) would apply in Example 1. The Commissioner considers that the more correct view is as expressed in paragraphs 38-44 above.

***Other goods from outside Australia whose destination is outside Australia***

46. For item 5 in section 38-190 and item 6 in section 38-185 to apply, the goods that are being repaired, renovated, modified or treated must be from outside Australia and have a destination outside Australia.

*Meaning of 'Australia'*

47. Australia is defined in section 195-1 as follows:

**Australia** 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 Australia.

48. Australia therefore includes the entire land territory of Australia, coastal areas and seabed, but not any external Territories, such as Norfolk Island, Christmas Island or the Australian Antarctic Territory. Under section 5C of the *Customs Act*, Australia also includes sea installations and resources installations (such as oil or gas rigs) that are attached to the seabed within the territorial boundaries of Australia<sup>12</sup>, or to an adjacent or coastal area as defined in that Act.

*From outside Australia*

49. Goods are from outside Australia when they are imported into Australia or they arrive in Australia from a place outside Australia.

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<sup>12</sup> The territorial limit of the coastal seas surrounding Australia is 12 nautical miles from the territorial sea baseline of Australian land masses. This was established in November 1990, by proclamation under section 7 of the *Seas and Submerged Lands Act 1973*.

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However, to satisfy the requirements for a GST-free supply, the goods must satisfy the description of 'from outside Australia' when the supply is made. Therefore, the place the goods are from must be examined at the time of supplying the repair, renovation, modification or treatment (or the supply of goods in the course of repair, renovation, modification or treatment).

50. It is the Commissioner's view that goods no longer have the character of goods 'from outside Australia' at the required time, if they are used in Australia before the repair, renovation, modification or treatment. This is because, when the supply is made, the goods are from the place at which they were last used. For goods imported for the purpose of being used, their journey from outside Australia ends when the goods arrive at the place where they are used. A new journey may then commence from that place.

51. A ship or aircraft that arrives in Australia for the purpose of, or including the purpose of, visiting various locations in Australia, is regarded as commencing new journeys when it travels to the various locations in Australia. In determining whether new journeys are commenced, it is necessary to consider whether there is a 'series of several adventures, and not one adventure divided into several stages'<sup>13</sup>. For example, a yacht arriving in Australia which is granted Customs permission<sup>14</sup> to visit various locations for recreation (for example, sightseeing or fishing), ends its journey from outside Australia, and commences new journeys to the various locations in Australia. Therefore, the yacht is not goods 'from outside Australia whose destination is outside Australia.'

52. However, for ships and aircraft (and goods on board the ship or aircraft) that are on a predetermined journey from outside Australia to a place outside Australia, the journey does not end because of the use of the ship or aircraft in Australia provided the only use of a ship or aircraft is for that journey. In these circumstances, the use does not break that predetermined journey. Use of the ship or aircraft is a means by which the journey is effected. The ship or aircraft, and parts of the ship or aircraft, and goods on board, retain the character of 'goods from outside Australia whose destination is outside Australia'.

53. For example, an aircraft that flies from overseas to several airports in Australia as part of a continuous predetermined journey, does not break the predetermined journey by flying in Australian airspace to those airports. Use of the aircraft in these circumstances is a means by which the journey is effected. The ship or aircraft, and parts of the ship or aircraft, and goods on board, retain the character of

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<sup>13</sup> *Board of Trade v Baxter* [1907] AC 373 at 378.

<sup>14</sup> Permission is granted under section 58 of the Customs Act. The permission is colloquially known as a 'cruising permit' and is usually granted for a set period of time. Approval under section 58 could also be granted in respect of an aircraft.

‘goods from outside Australia whose destination is outside Australia.’ Supplies of repairs carried out in an Australian port may therefore be GST-free.

54. Goods that are brought to Australia for the purpose of repair, renovation, modification or treatment and are sent to the supplier of the repair, renovation, modification or treatment, are ‘from outside Australia’ when the supply is made. The journey of the goods to the supplier commences at the place outside Australia from which the goods were brought. There is no other use of the goods which causes the end of that journey, and the commencement of another journey.

55. This is consistent with the legislature’s intended operation of these items, as indicated by the Explanatory Memorandum<sup>15</sup> which refers, at paragraph 5.82, to:

Goods which are imported into Australia to be repaired, renovated, modified, or treated...

56. The approach outlined at paragraph 52 above is also consistent with the example in the Explanatory Memorandum at paragraph 5.83. That example describes a scenario where an aircraft flying into Australia experiences engine difficulties, resulting in a repair being carried out in Australia before the aircraft resumes its international journey.

57. Customs documents may evidence the importation of goods, or arrival of goods from a place outside Australia. Customs laws require most arriving goods to be entered, or otherwise reported to Customs. For example, a foreign ship’s cargo unloaded in Australia will be entered for home consumption, warehousing or transshipment, whereas the ship itself will be reported on an arrival report, and granted authority to enter port.

58. Where no Customs documents exist, other evidence may demonstrate that goods are from outside Australia. See further, paragraphs 92 to 108 on documentary evidence.

#### *Destination outside Australia*

59. At the time the goods are being repaired, renovated, modified or treated, it must be intended that the goods will be exported. It is the Commissioner’s view that the items require the destination of the goods to be tested when the supply is made. The destination of the goods is the predetermined end of their journey, which is the place to which it is intended that the goods will travel after the repair, renovation, modification or treatment.

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<sup>15</sup> Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998.

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60. If there is a genuine intention, supported by documentary evidence<sup>16</sup>, to export the goods, but the intention later changes such that the goods are not actually transported out of Australia, the requirement that the goods had a destination outside Australia is met. That is, the item requires the intended destination to be a place outside Australia. However, the absence of actual export may be evidence that the intended destination was not outside Australia.

61. Where it is intended, when the process of repair, renovation, modification or treatment takes place, that the goods will be used in Australia after the process, the Commissioner considers that the goods do not have a destination outside Australia. The predetermined end to the journey of the goods is the place to which the goods will be sent to be used – after which a new journey may commence. In this context, ‘use’ of the goods does not include a minor or incidental use of the goods as part of their repair, renovation, modification or treatment - such as testing of the goods following their repair, renovation, modification or treatment.

62. However, a ship or aircraft may be used by sailing, navigating or flying it in Australia. This use will not cause an end to the journey, and will therefore not cause the goods to lose their character as ‘goods from outside Australia whose destination is outside Australia’, provided the sailing of the ship or flying of the aircraft is part of the predetermined journey and not a separate journey – see paragraph 51.

63. In the absence of contrary evidence, the Commissioner accepts that if goods are exported as soon as practicable or reasonable after the repair, renovation, modification or treatment is complete, they had a destination outside Australia when the supply was made.

64. Where goods are not exported, or the supplier cannot show that they were actually exported, other evidence will be required to demonstrate that the goods were intended for export, and therefore had a destination outside Australia. Other evidence which may indicate this could include Customs evidence of temporary importation, written contracts for repair and transportation into and out of Australia, and evidence of foreign ownership or registration of the goods.

65. For the items to apply, the nature of the stay of the goods in Australia while the repair, renovation, modification or treatment is undertaken must be intended to be temporary or transitory.

66. The use of the phrase ‘whose destination is outside Australia’, when directly following the initial phrase that identifies the goods as ‘goods from outside Australia’, implies that the goods are at all times in transit to a predetermined place. That is, on arrival in Australia, the goods already possess a destination outside Australia.

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<sup>16</sup> See paragraph 24 and paragraphs 92 to 108.

67. For these reasons, it is considered that the items require the imported goods, at the time when the supply is made, to be part way through a predetermined journey from a place outside Australia, to another or the same place outside Australia, via the place of repair, renovation, modification or treatment.

***Example 2 – Goods from outside Australia whose destination is outside Australia.***

68. *An aircraft arrives in Australia. On arrival it is discovered that the aircraft has a mechanical problem. The problem is repaired and the aircraft continues on its international route. The aircraft's stay in Australia is transitory. At the time of the repair, the aircraft has the character of goods from outside Australia whose destination is outside Australia. The use of the aircraft in flying in Australia is not a use of the goods which amounts to a break in the predetermined journey from outside Australia to a destination outside Australia. The use forms part of that journey. The supply of the repair is GST-free.*

***Example 3 – Yacht used in Australia under 'Cruising Permit'.***

69. *Angelo, a European travelling yachtsman, arrives in Sydney from New Zealand. Angelo intends to visit various locations in Australia for recreation purposes, and is granted a Custom's cruising permit to do so. At this point the yacht ends its journey from New Zealand, and commences a new journey to the next destination in Australia that Angelo intends to visit.*

70. *Before continuing his travel, Angelo contracts to have repairs made to his yacht. The supply of repairs is not in respect of goods from outside Australia whose destination is outside Australia and is not GST-free.*

***Example 4 – Goods that are not from outside Australia***

71. *An Australian businessman is about to embark on an overseas business trip. Prior to departure he engages a computer store to repair and upgrade his laptop computer, which was purchased from the store a few weeks earlier. The computer was originally manufactured in Japan and imported by the store for resale in Australia. As distinct from example 6 below at paragraph 77, the goods were not brought to Australia to be repaired. Upon arrival in Australia there was no predetermined journey to a destination outside Australia. The journey to Australia ended when the goods arrived at the retail store to be sold, such that they no longer have the character of goods 'from outside Australia.' At the time of the repair, the goods were not part way through a journey from outside Australia, via the*

*computer store, to a place outside Australia. The supply of the repair and upgrade is not GST-free under item 5 in subsection 38-190(1) or item 6 of subsection 38-185(1).*

### ***Example 5 – Goods used in Australia***

72. *A Japanese tourist arrives in Australia for a one month holiday. The tourist imports some personal goods, including a camera which he intends to use to take photos, and then take home at the end of his holiday. As the goods are brought to Australia to be used, the journey of the camera ends in Australia. Any repair of the camera that may be undertaken in Australia is not in respect of goods from outside Australia whose destination is outside Australia and would not be GST-free.*

73. To demonstrate that a supply is GST-free, the supplier needs documentary evidence to show the origin and intended destination of the goods. Documents such as Customs import and export entries, international transport documents, and commercial documents provide such evidence for most goods. However, for goods that may arrive in Australia and depart from Australia without Customs import and export entries, such as commercial ships, aircraft or containers covered by the *Customs Convention on Containers 1972*, other types of evidence are suitable. See paragraphs 92 to 108 for more examples of documentary evidence.

### ***Supply of goods in the course of repairing etc imported goods***

74. A supply of goods is GST-free where the elements of item 6 in the table in subsection 38-185(1) are satisfied. In addition to the requirement that there is a repair, renovation, modification or treatment of temporarily imported goods, the item requires that the following elements are satisfied:

- (a) there is a supply of goods;
- (b) the supply is *in the course of* repairing, renovating, modifying or treating the imported goods; and
- (c) the goods supplied are attached to or become part of the imported goods or become unusable or worthless as a direct result of being used to repair, renovate, modify, or treat the imported goods.

*Supply of goods*

75. A supply of goods is a supply of any form of tangible personal property.<sup>17</sup>

76. In the process of repairing, renovating, modifying or treating goods, a person may supply both goods and services, such as parts and labour. A supply of goods is GST-free under item 6 in subsection 38-185(1) if all the requirements of the item are satisfied. A supply of services is GST-free if all the requirements of item 5 in the table in subsection 38-190(1) are satisfied. It follows that if item 6 is satisfied, any services that are supplied at the same time by the same supplier will satisfy the requirements of item 5.

***Example 6 – Supply of goods in the course of repairing imported goods.***

77. *An overseas customer sends an Australian made clock back to the manufacturer for repair. The clock is to be returned to the overseas customer after the repair. The repairer replaces a damaged component and sends the clock back to the customer with an invoice itemising the charges for parts and labour. The supply is GST-free, regardless of whether:*

- *the parts are ancillary to the supply of repairs, or*
- *the labour is ancillary to the supply of parts,*
- *the supply is properly apportionable into two supplies that are respectively GST-free under item 6 in subsection 38-185(1) and item 5 in subsection 38-190(1).*

*‘In the course of’*

78. For a supply of goods to be ‘in the course of’ repairing, renovating, modifying or treating other goods (the imported goods), it must be made by a person who is carrying out a repair, renovation, modification or treatment of the imported goods.

79. The present tense of the words ‘repairing, renovating, modifying or treating’ in item 6 require the supply to be made as the process is being carried out. It follows that the supplier must be carrying out the process, although it is not a requirement that the supplier charge a separate fee for the process.

80. A supplier is the entity that carries out the repair, renovation, modification or treatment if it physically does so itself (or through its

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<sup>17</sup> Section 195-1.

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employees), or if it engages a subcontractor to undertake the process for it. In the case where a subcontractor is engaged, both the head contractor's and the subcontractor's supply is in the course of repairing, renovating, modifying or treating other goods.

81. A supply of goods is not 'in the course of' repairing, renovating, modifying or treating other goods if the supplier of the goods is not carrying out (or contractually responsible to arrange the carrying out of) a physical process in respect of the other goods. For example, a supply of a part to the owner of imported goods, where the owner will use the part to repair the imported goods, is not a supply of goods in the course of repair.

82. A supply of goods earlier in the distribution chain is not in the course of the repair, renovation, modification or treatment, if the earlier supplier does not also carry out the process. For example, a supply of electrical components by an electronics retail store, to a technician for re-supply in repairing temporarily imported goods, is not GST-free under item 6. The supply by the retailer is not in the course of repairing, renovating, modifying or treating the temporarily imported goods. The supply by the technician (if the technician resupplies the goods) is in the course of repairing other goods.

### ***Example 7 – Goods supplied in the course of repairing imported goods.***

83. *An overseas customer sends Australian manufactured equipment back to the manufacturer for repair. The Australian manufacturer supplies the customer with a replacement component needed to repair the equipment, and installs the component. The customer is charged for the component and the labour. The equipment is returned to the customer overseas.*

84. *The supply of the component is made in the course of repairing the equipment and therefore is GST-free.*

### ***Example 8 – Goods not supplied in the course of repairing imported goods.***

85. *An overseas company sends faulty equipment to its Australian branch to be repaired. Employees of the company at the Australian branch carry out the repair using parts acquired from a local supplier. The supply of the parts is not made in the course of repairing the equipment and is therefore not GST-free.*

***Example 9 – Supplies through a subcontractor.***

86. *As in example 7, an overseas customer sends Australian manufactured equipment back to the manufacturer for repair. The Australian manufacturer subcontracts the repair to a subcontractor. A component is needed to repair which the subcontractor acquires from another supplier. After the repair is completed the equipment is returned overseas.*

87. *The supply of the component to the subcontractor is not made in the course of repairing the equipment and is therefore not GST-free. The subcontractor's supply of labour and the component to the Australian manufacturer is made in the course of the repair and is GST-free. The manufacturer's supply to the overseas customer is also GST-free.*

***The goods supplied are attached to or consumed***

88. This requirement is met if the goods supplied are attached to or become part of the other goods or if the goods supplied become unusable or worthless as a result of the repair, renovation, modification or treatment. Some consumable goods, such as oils or adhesives, are incorporated into the other goods, as are spare parts or new components.

89. For goods to be attached they must be affixed with a significant degree of permanency. Goods become part of other goods when they are incorporated into the other goods.

90. Goods that become unusable or worthless as a result of the repair include things such as cleaning agents, solvents or chemical catalysts.<sup>18</sup>

91. Consistent with the requirement of item 6, that the goods are supplied 'in the course of repairing, renovating, modifying or treating', the supplier must be the person who attaches the goods to the imported goods (or is contractually responsible for arranging the attachment), or uses them in the process applied to the imported goods.

**Documentary evidence**

92. Record keeping for supplies covered by Subdivision 38-E is important, not only because of the general record keeping requirements of taxation laws, but also because suppliers who treat supplies as GST-free must be confident that the circumstances of the

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<sup>18</sup> This is consistent with the example at paragraph 5.83 of the Explanatory Memorandum to A New Tax System (Goods and Services Tax) Bill 1998.

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supply genuinely meet the requirements of the item in question. Suppliers must sight and retain evidence to this effect.

93. Suppliers are required to keep records that record and explain their transactions. The Explanatory Memorandum in general reference to section 38-185 states 'You must keep appropriate records to verify the export and when it happened.'<sup>19</sup> Section 70 of the *Taxation Administration Act 1953* provides (in part):

Keeping records of indirect tax transactions

(1) If you:

- (a) make a taxable supply, taxable importation, creditable acquisition or creditable importation, or
- (b) make a supply that is GST-free or input taxed,  
...

you must:

- (d) keep records that record and explain all transactions and other acts you engage in that are relevant to that supply...; and
- (e) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.

94. In the Commissioner's view, records 'explain' a GST-free transaction made under Subdivision 38E if they contain information that will enable an independent person with accounting skills and knowledge of import and export procedures to understand the essential features of the transaction.

95. For a supply that may be GST-free under the repair of temporary imports provisions discussed in this Ruling, the onus is on the supplier to be satisfied that goods being repaired, renovated, modified or treated have a destination outside Australia. The supplier will also need to have sufficient evidence to demonstrate that all of the requirements of the particular item or items have been met.

96. The documents retained as evidence for a GST-free supply should provide a reasonable basis for an independent party, with no prior knowledge of the transaction, to be satisfied that the requirements of the item are met.

97. The following paragraphs provide a guide to the types of documents and the information they normally contain which will demonstrate that the elements of the relevant item are satisfied.

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<sup>19</sup> The Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 at paragraph 5.79.

98. Suitable documentary evidence to show that goods being repaired, renovated, modified or treated are from outside Australia and have a destination outside Australia, includes copies of:

- Customs entry for home consumption in respect of the goods (the entry may indicate temporary importation, for example by a tariff concession under item 21 of Schedule 4 to the *Customs Tariff Act 1995* or by the taking of security in respect of the import duty payable if the goods are not exported in accordance with the conditions of the temporary importation),
- Other import documentation, such as international carnets,
- Documents evidencing the movement of international shipping containers under the *Customs Convention on Containers 1972*,
- International transport evidence showing the movement of goods from a place outside Australia to a place in Australia,
- Customs documents relating to the export of the goods, and
- International transport documents showing the movement of goods to a place outside Australia.

99. Transport documents include bills of lading, air waybills, sea waybills, consignment notes, certificates of shipment, house bills, postal certificates and proof of delivery documents.

100. A supplier should also retain the appropriate commercial evidence, such as invoices or purchase orders and contracts.

101. Some of the evidence listed above of the intended destination of goods, such as export documents, may only come into existence (or into the supplier's possession) after the supply. If a supplier that is not confident of receiving this evidence after the supply, and who does not possess other evidence at the time the supply is made, treats the supply as taxable, a refund of overpaid GST made be sought if the evidence becomes available. See further paragraph 27 of this Ruling.

102. Where the goods being repaired, renovated, modified or treated are a ship or aircraft that has not been entered for home consumption, the following evidence may be available to a supplier:

- Customs certificate of clearance as evidence of departure of the ship or aircraft,
- documents relating to the foreign ownership or registration of the ship or aircraft,

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- evidence of shipping routes or schedules, or flight timetables,
- a copy of the recipient's passport (for owners of small craft), and
- a declaration from the recipient that the ship or aircraft has a destination outside Australia.

103. Provided there is no information to the contrary, the Commissioner accepts the final certificate of clearance as sufficient evidence that the ship or aircraft, whether commercial or private, had a destination outside Australia when the repair, renovation, modification or treatment was carried out, or goods supplied in the course of the repair, renovation, modification or treatment.

104. The types of records available to a supplier will vary with the circumstances of the supply. A full examination of documents that demonstrate that goods were exported is made in GSTR 2002/6. Table 1 in Appendix B to that Ruling lists the types of transport documentation a supplier may have, depending on the mode of transport used to export the goods. Table 2 lists the types of commercial documentation and official documents that a supplier may have to explain the transaction. A combination of these documents will connect the supply of the goods or services with the import or export of goods. The lists of documents described in the Appendix to GSTR 2002/6, and in this Ruling are not exhaustive but merely offer guidance as to the types of documents available.

105. Suppliers may have other evidence to support their knowledge that the imported goods were exported, or that they had a destination outside Australia.

### ***Example 10 – Evidence that the requirements of the items are met.***

*106. As in example 5, an Australian supplier repairs a clock from outside Australia whose destination is outside Australia. The clock is sent to Australia by the foreign customer and entered with Customs. After the clock is repaired, the supplier delivers it to an international courier who transports the goods back to the foreign customer.*

*107. As evidence demonstrating that the requirements of a GST-free supply are met, the supplier obtains a copy of the Customs import entry. The entry shows the date of importation, and notes that no duty or GST was payable on importation due to the concessional treatment of goods imported for repair (item 21 of Schedule 4 Customs Tariff Act 1995). The supplier also retains a copy of the consignment note issued by the international courier, which states the destination of the repaired goods. These documents, in combination with commercial*

*contracts and invoices, provide sufficient evidence that the supply is GST-free.*

***Example 11 – Evidence that the requirements of the items are met.***

108. *An international vessel arrives in Australia and unloads cargo. Before loading foreign bound cargo, the shipping company contracts with an Australian business to repair a number of shipping containers used by the shipping line. The containers are not entered for home consumption, therefore there will be no Customs import or export documentation. The Australian business delivering the repaired containers back to the international shipping company needs to obtain information that the containers are from outside Australia and have a destination outside Australia. As there are no other available documents, evidence obtained from the international shipping company, such as a declaration to that effect is sufficient.*

## **Detailed contents list**

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**Commissioner of Taxation**

28 February 2003

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*Previous draft:*

Previously released as part of GSTR 2001/D6

*Related Rulings/Determinations:*

TR 97/23; GSTR 1999/1; GSTR 2002/6;

*Subject references:*

- Australia
- connected with Australia
- destination outside Australia
- documentation
- export
- exported
- export of goods
- external territories
- goods
- GST-free
- import
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- manufacture
- modify
- modification
- overseas destination
- recipient
- repair
- repairing
- renovate
- renovating
- renovation
- supplied
- supplier
- supply
- treating

- treatment

*Legislative references:*

- ANTS(GST) Bill 1998
- ANTS(GST)A99 9-5
- ANTS(GST)A99 Div 38
- ANTS(GST)A99 Div 38B
- ANTS(GST)A99 Div 38E
- ANTS(GST)A99 38-185
- ANTS(GST)A99 38-185(1)
- ANTS(GST)A99 38-185(1) item 1
- ANTS(GST)A99 38-185(1) item 5
- ANTS(GST)A99 38-185(1) item 6
- ANTS(GST)A99 38-185(1) item 6(a)
- ANTS(GST)A99 38-185(1) item 6(b)
- ANTS(GST)A99 38-190
- ANTS(GST)A99 38-190(1)
- ANTS(GST)A99 38-190(2)
- ANTS(GST)A99 38-190(1) item 2
- ANTS(GST)A99 38-190(1) item 5
- ANTS(GST)A99 195-1
- Customs Act 1901 5C
- Customs Act 1901 58
- Customs Tariff Act 1995 Item 21
- Seas and Submerged Land Act 1973 7
- TAA 1953 37
- TAA 1953 70

*Case references:*

- Board of Trade v Baxter [1907] AC 373 at 378

*Other references:*

- ATO Practice Statement 2002/12

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