GSTR 2003/4 - Goods and services tax: stores and spare parts for international flights and voyages.

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From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

This document has changed over time. This is a consolidated version of the ruling which was published on *31 July 2013*

Goods and Services Tax Ruling
Goods and services tax: stores and spare parts for international flights and voyages.

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Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you - provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

*[**Note:** This is a consolidated version of this document. Refer to the Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Ruling is about

1. This Ruling is about the operation of item 5 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 GST-free supply of ship's or aircraft's stores, or spare parts, for international flights and voyages.

2. In particular, this Ruling sets out the Commissioner's views on:

(a) the meaning of aircraft's stores, ship's stores and spare parts;

(b) when a flight or voyage has a destination outside Australia; and

(c) the types of documents that a supplier needs to keep to demonstrate that supplies are *for use, sale or consumption* on an international flight or voyage.

3. All legislative references in this Ruling are to the GST Act, and all references to item 5 are to item 5 in the table in subsection 38-185(1), unless otherwise stated.

Date of effect

4. This Ruling applies [to tax periods commencing] both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

5. [Omitted.]

Context

6. 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.

7. Goods exported from Australia can be supplied GST-free where the requirements of one of the items in the table in subsection 38-185(1) are met[1]. Stores and spare parts for international flights and voyages can be supplied GST-free where the requirements of item 5 are met.

Ruling

8. Section 38-185 covers the GST treatment of supplies of goods that are to be exported. The table in subsection 38-185(1) lists the supplies of goods that are GST-free.

1 Items 1-4 are discussed in Goods and Services Tax Ruling GSTR 2002/6 'Goods and Services Tax: exports of goods, items 1-4 of the table to subsection 38-185(1) of the A New Tax System (Goods and Services Tax) Act 1999).' Item 6 is discussed in Goods and Services Tax Ruling GSTR 2003/4 '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.'

9. Item 5 provides for GST-free supplies of stores or spare parts for use, sale or consumption on flights and voyages with a destination outside Australia.

10. 'Australia' is defined in section 195-1. Australia includes all the land territory of Australia (except the external territories), the coastal sea of Australia and installations described in section 5C of the *Customs Act 1901* ('the Customs Act').

11. Aircraft's stores means stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft.[2] Ship's stores means stores for the use of the passengers or crew of a ship, or for the service of a ship.[3]

12. The term 'stores' includes all consumable goods such as food, water and beverages intended for consumption on board an aircraft or ship, and any goods taken on board to be sold, such as souvenirs, photographic film, confectionery and tobacco products. 'Stores' also includes consumables necessary for the operation and maintenance of an aircraft or ship, such as fuel and lubricants.[4]

13. Goods brought on board by the crew or passengers as their personal belongings or for private use, are not stores for the purpose of item 5.[5]

14. Spare parts are parts or components of a ship or aircraft that are intended to be used to replace defective or worn parts or components, whether or not they are supplied for immediate use in fixing to the craft or vessel.

15. Stores or spare parts are *for* use, sale or consumption on a ship or aircraft if it is intended, when the goods are supplied, that the goods will be used, sold or consumed on that ship or aircraft. The actual use, sale or consumption of the goods may provide evidence of such an intention.

16. To be GST-free, the stores or spare parts must be supplied for a flight or voyage which has a destination outside Australia (that is, an international flight or voyage). An international flight or voyage may include a journey between places in Australia.

17. Destination means the predetermined end to a journey or voyage. For a voyage or flight to have a destination outside Australia, it must be intended that a ship 'lay anchor', or an aircraft land, at a predetermined location outside Australia. It is not enough for a ship to simply pass through international waters, or for an aircraft to merely fly through international air space.

18. A journey between places in Australia may form part of, or be a component of, an international flight of voyage. However, a journey between places in Australia is not part of an international flight or voyage if that journey is identifiable as a distinct and separate flight or voyage from the international flight or voyage.

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2 Defined in section 195-1, by reference to section 130C of the Customs Act.
3 Defined in section 195-1, by reference to section 130C of the Customs Act.
4 Consistent with the Kyoto Convention 2000, Annex J.
5 These goods could be supplied to the passenger GST-free under another item, for example, under the sealed bag scheme in accordance with the Customs barrier rules contained in the regulations under item 7.

19. A domestic journey is a separate flight or voyage if it has a different purpose to that of the ultimate international flight or voyage, if its route is disconnected geographically to that of the international flight or voyage, or if the timing of the journey is distinct and independent of the international flight or voyage.

20. Stores supplied for use on an aircraft or ship embarking on an international flight or voyage, where the stores will be exported on board the ship or aircraft, are taken to be *for use* on the flight or voyage. This is so even if it is known that some of the stores may be used, sold or consumed on a subsequent flight or voyage, such as a return journey to Australia.

21. For practical purposes, where Customs approves the uplifting of duty-free aircraft's or ship's stores[6] in relation to a particular international flight or voyage, we accept that the supply of aircraft's or ship's stores or spare parts for that flight or voyage is a GST-free supply. This is because Customs approval will only be given where the flight or voyage is an international flight or voyage.

22. For a supplier to demonstrate that supplies made are GST-free under item 5, the supplier needs to retain sufficient documentary evidence to show that:

(a) the goods supplied are aircraft's or ship's stores or spare parts; and

(b) those stores or spare parts are for use, consumption or sale on board an aircraft or ship which is on, or is embarking on, an international flight or voyage.

6 Approved under section 129 of the Customs Act.

23. Documentary evidence is discussed at paragraphs 74 to 87 in the Explanations section of the Ruling.

24. If suppliers of GST-free supplies treat their supplies as taxable when they lodge a BAS but later gain sufficient evidence to demonstrate that the supply is GST-free, the Commissioner may exercise the discretion to allow a refund of any overpaid GST: see Miscellaneous Taxation Ruling MT 2010/1.[6A] If a supplier satisfies the refund requirements set out in MT 2010/1, the supplier can obtain a refund, by lodging a revised BAS[7] or alternatively, in certain circumstances, may recover the overpaid amount in a later BAS.[8]

Explanations (this forms part of the Ruling)

25. 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 5 is considered below.

Item 5 – Export of goods that are to be consumed on international flights or voyages

26. Item 5 in the table in subsection 38-185(1) states:

Export of goods that are to be consumed on international flights or voyages	A supply of: (a) aircraft's stores, or spare parts, for use, consumption or sale on an aircraft on a flight that has a destination outside Australia; or (b) ship's stores, or spare parts, for use, consumption or sale on a ship on a voyage that has a destination outside Australia; whether or not part of the flight or voyage involves a journey between places in Australia.

[6A] Miscellaneous Taxation Ruling MT 2010/1 *Miscellaneous tax: restrictions on GST refunds under section 105-65 of Schedule 1 to the Taxation Administration Act 1953*.

7 For tax periods that start on or after 1 July 2012 an assessment is made when the BAS is lodged. When entities lodge a revised BAS they are applying for an amendment.

8 If the conditions specified in GSTE 2013 /1 – Goods and Services Tax: Correcting GST Errors determination 2013 are met.

27. A supply of aircraft's or ship's stores or spare parts is GST-free where item 5 in the table in subsection 38-185(1) is satisfied. Item 5 requires:

- there is a supply of goods that are aircraft's stores, ship's stores or spare parts;
- the goods are for use, consumption or sale on an aircraft or ship; and
- the aircraft or ship is to depart on a flight or voyage which has a destination outside Australia (whether or not part of the flight or voyage involves a journey between places in Australia).

Supply of aircraft's or ship's stores or spare parts

28. Aircraft's stores means stores for the use of the passengers or crew of an aircraft, or for the service of the aircraft.[9] Ship's stores means stores for the use of the passengers or crew of a ship, or for the service of the ship.[10]

29. 'Stores' includes consumable goods ordinarily regarded as stores, for example, goods intended for consumption by the passengers and/or crew on board the aircraft or ship (such as food and beverages), and goods necessary for the operation and maintenance of the aircraft or ship (such as fuel and lubricants).[11] Goods taken on board an aircraft or ship that are to be sold to passengers or crew, such as souvenirs, photographic film, confectionery, and tobacco products, are also stores.

30. Goods taken on board by the passengers and/or crew as their personal belongings, or for private use, such as jewellery, cameras or personal toiletries, are not stores for the purposes of item 5.[12]

31. Spare parts are parts or components that are intended to be affixed to a ship or aircraft to replace any worn or defective parts or components whether or not supplied for immediate use.

32. Goods capable of being stores or spare parts attain the character of 'ship's stores', 'aircraft's stores' or 'spare parts' within the meaning of item 5 if the goods are supplied for a particular purpose. The goods must be for use, sale or consumption on board a ship or aircraft to be stores or spare parts within the meaning of item 5.

For use, sale or consumption on an aircraft or ship

33. For a supply of aircraft's or ship's stores or spare parts to be GST-free under item 5, the goods must be for use, sale or consumption on a ship or aircraft.

34. In determining whether something is *for use* in a particular manner, judicial authority suggests that the intended use of the thing should be examined.

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9 Section 195-1 and section 130C of the Customs Act 1901.
10 Section 195-1 and section 130C of the Customs Act 1901.
11 This is consistent with the Kyoto Convention 2000, Annex J.
12 Departing passengers (but not persons employed as crew members) may be entitled to a refund of GST on goods purchased within 30 days of departure from Australia, if the conditions of the Tourist Refund Scheme are met. See Division 168 and regulations 168-5.01 to 168-5.17.

35. In *Deputy Commissioner of Taxation v Stewart and Another*,[13] the High Court considered whether goods were 'for use… by… a benevolent institution' so as to satisfy a sales tax exemption.[14] Deane J explained the requirement as follows:

> …the question whether particular goods satisfy the description of being goods for use by a public benevolent institution will ordinarily fall to be answered by identifying the relevant projected use of the goods…[15]

36. In the same case, Brennan J answered the question of when the required intention must exist, stating:

> The second question thus falls to be answered in respect of each machine as at the time when it was bailed to a benevolent institution. Was it then a machine 'for use... by a public benevolent institution'?[16]

37. The time that the goods were bailed to the institution was when the sales tax liability would have been imposed. Deane J also confirmed this as the time that the intended use of the goods should be ascertained. His Honour said, at CLR 400, that goods come within the exemption item:

> …if, and only if, they satisfy the relevant description [of goods for use by a public benevolent institution][17] at the time when the liability to sales tax would otherwise attach.

38. Accordingly, in the context of item 5, a supplier supplies stores or spare parts *for use, consumption or sale* on board a ship or aircraft, if, when the goods are supplied, it is intended that they will be used, consumed or sold on the ship or aircraft.

39. Before goods can be supplied GST-free, the supplier must be aware, and have evidence, that the goods are intended to be used specifically as stores or spare parts on an international flight or voyage.

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13 (1984) 154 CLR 385; (1984) 84 ATC 4146; (1984) 15 ATR 387.
14 Item 81 in the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935.
15 (1984) 154 CLR 385 at 401-2; (1984) 84 ATC 4146 at 4155; (1984) 15 ATR 387 at 398.
16 (1984) 154 CLR 385 at 397; (1984) 84 ATC 4146 at 4153; (1984) 15 ATR 387 at 395.
17 Words in brackets added.

40. Supplies made earlier in the distribution chain are not GST-free unless the relevant suppliers are aware and have evidence that the goods will ultimately be for use as stores on an international flight or voyage. This is because goods supplied earlier in a chain of distribution do not usually have the character of stores for use, consumption or sale on board the ship or aircraft. Rather, the goods are supplied for re-supply. Therefore, when the earlier supply is made, the goods have not attained the character of 'stores'.

41. An exception arises where the relevant suppliers are aware and have evidence that the goods will ultimately be for use as stores on an international flight or voyage. In those circumstances, the goods have the requisite character when the goods are supplied.

42. For example, an entity may supply bunker fuel to a reseller, but deliver the fuel directly onto a ship. The reseller is the entity that makes the supply of ownership of the fuel to the operator of the ship. Because the goods are delivered directly to the ship which is on or embarking on an overseas voyage, the earlier supply is a supply of goods which have, when the goods are supplied, acquired the character of 'ships stores' for use for the requisite purpose. The earlier supply is a GST-free supply of stores.

43. Some indicators that a supplier may use to determine whether goods are intended for use, consumption or sale on board an aircraft or ship include:

- representations made by the recipient (the ship or aircraft operator);
- the nature of the goods;
- the quantity of goods supplied;
- delivery of the goods directly to an aircraft or ship; or
- evidence of customs approval to take aircraft's or ship's stores on board under section 129 of the Customs Act.

44. Item 5 does not require that the goods supplied are actually used as stores on an international flight or voyage. However, evidence that the goods were intended to be used for the requisite purpose is required – see paragraphs 74 to 87. The actual use of the goods may be relevant as evidence of the intended use when the goods are supplied.

45. Where it is known when the goods are supplied that the goods are partly for use as stores on an international flight or voyage, and partly for another use, the supply is partly GST-free. For example, an airline may acquire a bulk quantity of fuel, partly to be used on international flights, and partly for domestic flights. The amount of GST payable is calculated in accordance with section 9-80. Any reasonable method of apportionment may be used.[18]

46. However, stores which are to be taken on board a ship or aircraft embarking on an international voyage are taken to be for use on an international flight or voyage. The supply of these stores is GST-free. There is no requirement to apportion supplies of stores that are to be exported, even if it is known that the stores may not be completely consumed before the ship or aircraft returns to Australia. Re-imported stores may be subject to Customs duty and GST upon importation, if they are unloaded and entered for home consumption in Australia.[19]

47. A supply of stores for use on an international flight or voyage, does not become a taxable supply where the goods are actually used for another purpose as a result of a change in intention. While the GST Act provides for adjustments in various circumstances, such as under Divisions 19 and 129, none of the adjustment provisions applies in these circumstances. Accordingly, there is no adjustment event if goods intended to be used for item 5 purposes when the goods are supplied are not in fact used in that way. However, clear evidence that the goods were intended to be used for the requisite purpose is required – see paragraphs 74 to 87. Nor is there an adjustment if goods *not* intended to be used for item 5 purposes when the goods are supplied are in fact applied to such purposes. This is to be contrasted with the situation where evidence of the intention becomes available after the supplier has lodged a business activity statement for the period bringing GST to account on the supply; in that case, a refund may be paid – see paragraph 24 above.

Aircraft or ship is on a flight or voyage that has a destination outside Australia

48. To establish whether a flight or voyage has a destination outside Australia, the meaning of 'Australia' for the purposes of the GST Act must be examined.

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18 See Goods and Services Tax Ruling GSTR 2001/8, 'Goods and Services Tax: apportioning the consideration for a supply that includes taxable and non-taxable parts.'

19 If a supplier of stores reimports the goods into Australia, subsection 38-185(2) operates to deny the GST-free treatment which would otherwise apply under item 5.

Meaning of 'Australia'

49. 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.*

50. Australia therefore includes the entire land territory of Australia, and Australia's coastal areas and sea bed, 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 and resources installations (such as oil or gas rigs) that are attached to the sea bed within the territorial boundaries of Australia,[20] or to an adjacent area or coastal area as defined in that Act.

Flight or voyage with a destination outside Australia

51. Item 5 requires that stores or spare parts be for use, consumption or sale on board an aircraft or ship that is on, or is embarking on, a flight or voyage with a destination outside Australia. The topic description expresses this as 'export of goods that are to be consumed on international flights or voyages'.

52. Item 5 contemplates that an international flight or voyage may have a part which 'involves a journey between places in Australia'. Accordingly, even though an international flight or voyage must have a destination outside Australia, it can include a journey between places in Australia as a stage or leg of the overall flight or voyage. However, it is necessary to determine whether the journey is part of the international flight or voyage or a separate flight or voyage with its own destination.

53. 'Destination' means the predetermined end point of a journey or voyage[21] As the expression 'international voyage' in the Customs Act is defined by reference to the similar concept of a voyage to a place outside Australia, guidance on the meaning of a voyage with a destination outside Australia can be obtained from Customs cases.[22]

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20 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.

21 The Macquarie Dictionary, Third Edition.

22 The topic description to item 5 also refers to 'international flights or voyages' – see paragraph 26 above.

54. The Customs Act defines 'international voyage' as:

> *a voyage, whether direct or indirect, between a place inside Australia and a place outside Australia.*[23]

55. The High Court of Australia considered the Customs definition of 'international voyage' in *BP Australia Limited v. Bissaker* (1987) 163 CLR 106. The Court was required to decide whether excise duty was payable on fuel supplied to Japanese fishing vessels in Australia. Excise duty was not payable if the vessels came within the definition of 'ship' in section 130C of the Customs Act. The definition of ship in section 130C incorporates the definition of international voyage.

56. The Court decided that, as the vessels were departing for fishing grounds, which was not a destination outside Australia, they were about to make a voyage which was not an international voyage.

57. In reaching its decision, the Court rejected the argument that the fishing boats were on one international voyage beginning and ending in Japan. The Court acknowledged that a ship can often be engaged on more than one voyage at the same time. Where the primary voyage is an international voyage, a secondary voyage that is undertaken may be identifiable as distinct from the primary international voyage.

58. The distinction may be temporal, geographic or even purposive. That is, the secondary voyage may take place at a distinct time, or may include a secondary destination that has no connection geographically with the primary route, or may have a purpose (such as sight-seeing) that sets it apart from the primary voyage.

59. In this case the Court distinguished the secondary voyage to the fishing grounds by focusing from an Australian perspective, looking to the voyage which commenced in Australia at the time the fuel was purchased. This voyage was distinct from the international voyage and the distinction was therefore both geographic and purposive.

60. In the English case of *Board of Trade v. Baxter* (1907) AC 373, the House of Lords, in attributing a meaning to the word 'voyage', made the following comments:[24]

> *It must in each case be a question of fact what is a voyage, and in ascertaining what it is a Court may regard the following among other considerations: The duration of the adventure in point of time and its unity; its geographical limits and direction; whether new cargoes are shipped, or new charters made, or ports visited in orderly succession; and in particular whether there has been a sailing from, and afterwards a return to, the United Kingdom.*

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23 Section 130C.
24 Board of Trade v. Baxter (1907) AC 373 at page 378.

> *If, looking at what is done as a matter of business, the Court perceives that there is a series of several adventures, and not one adventure divided into several stages, then it is not one voyage but two or more voyages…*

61. For the purposes of item 5, the Commissioner accepts that a ship departing from Australia is on a voyage that has a destination outside Australia when the ship is undertaking an international voyage within the meaning of the Customs Act. This is the case even if the particular international voyage involves a journey between places in Australia. However, item 5 is not satisfied when the ship is undertaking a secondary voyage that is not an international voyage within the meaning of the Customs Act. Similarly, the requirement is not satisfied if the ship merely sails through international waters without 'laying' anchor at a place outside Australia.

Example 1 – international voyage that involves a journey between places in Australia.

62. *A foreign registered cargo vessel travels on a set route from Singapore to Sydney, discharging overseas cargo on the way in Brisbane and then in Sydney. Foreign bound cargo is loaded in Sydney and the ship returns to Singapore. This entire voyage is an international voyage, even though part of the voyage involves a journey within Australia between Brisbane and Sydney.*

63. *On the same route the ship loads domestic cargo in Brisbane to be unloaded in Sydney. As the ship still carries overseas cargo to be unloaded in Sydney, the entire voyage retains its international character. The purpose of the international voyage is to unload and load cargo for international trade. While the Brisbane to Sydney leg has an additional purpose, it remains part of the international voyage.*

64. *Even if the ship discharges all of its overseas cargo in Brisbane and carries domestic cargo to Sydney, the voyage retains its international connection at all times, as the ship is required to travel to Sydney to load cargo for export to Singapore. The journey from Brisbane to Sydney is made as part of the international voyage.*

Example 2 – separate voyage that is not an international voyage.

65. *A ship from Singapore is bound for Sydney to load cargo for export. The ship does not carry cargo for discharge at an Australian port. The ship arrives at Brisbane and takes on a load of domestic cargo to be discharged in Sydney. The voyage from Brisbane to Sydney is disconnected from the ultimate international voyage, as it is not concerned with the collection or discharge of any international cargo. The transport of domestic cargo within Australia is a purpose separate from the purpose of the international voyage. As there is no*

international cargo on board, the Brisbane to Sydney leg is a separate voyage disconnected from and not part of the international voyage.

Example 3 – separate voyage that is not an international voyage.

66. *On the same route, the Singaporean ship arrives in Brisbane and unloads some international cargo. It travels on to Newcastle and discharges the balance of its international cargo. Whilst in Newcastle it secures a contract for an urgent delivery of domestic cargo to Wollongong. The sole purpose of travelling between Newcastle and Wollongong is to transport domestic cargo. The ship travels from Wollongong to Sydney, and loads goods for export to Singapore. The ship then departs Australia. The journey from Newcastle to Wollongong is disconnected from the international voyage as the diversion is solely for a non-international purpose. This leg of the route is not an international voyage.*

67. We adopt a corresponding meaning of flight with a destination outside Australia. The definition of aircraft in section 130C of the Customs Act incorporates the definition of international flight. Section 130C provides:

> International flight, in relation to an aircraft, means a flight, whether direct or indirect, between:
>
> (a) a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land; or
>
> (b) a place outside Australia from which the aircraft takes off and a place in Australia at which the aircraft lands.

68. The requirement under item 5, that an aircraft be on a flight that has a destination outside Australia, is satisfied when the aircraft is departing Australia on an international flight within the meaning of the Customs Act. This is the case even if the particular international flight involves a journey between places in Australia. As with the shipping examples above, item 5 is not satisfied when the aircraft is undertaking a secondary flight that is not an international flight. Similarly, the requirement is not satisfied if the aircraft merely flies through international airspace without landing outside Australia.

69. The status of a particular flight or voyage, for the purposes of item 5, must be determined when the aircraft's or ship's stores or spare parts are supplied. Also, the immediate journey should be examined to decide whether it is distinct or disconnected from any ultimate international flight or voyage. A supply of goods is only GST-free under item 5 if those goods are for use on an international flight or voyage. As noted in paragraph 46, stores supplied for use on

an aircraft or ship embarking on an international flight or voyage, where the stores will be exported on board the ship or aircraft, are taken to be *for use* on the flight or voyage. However, if, for example, stores are supplied for use on a domestic flight and a subsequent international flight, an apportionment is required, as discussed in paragraph 45.

70. For a private yacht or pleasure craft travelling in Australia on a cruising permit,[25] Customs does not consider the vessel to be on an international voyage until the vessel departs its final Australian port after being issued with a final certificate of clearance, indicating a foreign port as the destination. This is because the domestic travel is a separate and distinct voyage from the international voyage. The Commissioner takes the same view for the purposes of item 5.

Example 4 – cruising permit for 12 months

71. *Angelo, a European travelling yachtsman, arrives in Sydney from New Zealand after travelling throughout the Pacific Islands. Customs issues a cruising permit, authorising the yacht to visit various places on the coast of Australia for a 12-month period. After spending some time around southern Queensland, the yacht leaves Brisbane for Darwin, destined ultimately to return to Europe via Indonesia. Angelo hugs the east coast visiting various islands on the Great Barrier Reef before obtaining a final certificate of clearance from Customs in Darwin. The international voyage commences in Darwin. The various journeys between places in Australia while on the cruising permit are separate voyages, disconnected from the ultimate round the world voyage. The disconnection is temporal (time is taken out from the international voyage), geographic (distinct locations are chosen within Australia) and purposive (the specific purpose being to sightsee particular locations).*

72. *When Angelo is preparing to leave Darwin for Indonesia, stores that he purchases for the journey may be GST-free under item 5, if he can produce sufficient evidence of his imminent departure.*

73. If suppliers make GST-free supplies of aircraft's or ship's stores or spare parts, they need to retain sufficient documentary evidence to show that the flight or voyage had a destination outside Australia. Documentary evidence is discussed below.

25 Under section 58 of the Customs Act, Customs may grant a foreign yacht permission to visit places other than ports appointed under the Customs Act 1901, commonly known as a cruising permit.

Documentary evidence

74. Record keeping for supplies covered by section 38-185 is important, not only because of the general record keeping requirements of GST, but also because suppliers who make GST-free supplies must be confident that the circumstances of the supply genuinely meet the requirements of the item in question. Suppliers must sight and retain evidence to this effect.

75. 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.'[26] Subsection 382-5(1) of Schedule 1 to the *Taxation Administration Act 1953* provides:

> **'Records of transactions**
>
> (1) You must:
>
> (a) keep records that record and explain all transactions and other acts you engage in that are relevant to a supply, importation, acquisition, dealing, manufacture or entitlement to which this subsection applies; and
>
> (b) retain those records for the longest of:
>
> (i) 5 years after the completion of the transactions or acts to which they relate; and
>
> (ii) the period of review for any assessment of an assessable amount to which those records, transactions or acts relate; and
>
> (iii) if such an assessment has been amended under Subdivision 155-B – the period of 4 years mentioned in paragraph 155-70(2)(a) (which provides for a refreshed period of review) that applies to the latest such amendment.

76. 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 concerned, to be satisfied that the requirements of item 5 are met.

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26 The Explanatory Memorandum to the A New Tax System (Goods and Services Tax) Bill 1998 at paragraph 5.79.

77. The following paragraphs provide a guide to the types of documents and the information they normally contain which may demonstrate that the elements of the item 5 are satisfied.

78. For supplies to commercial ships and aircraft, the documentary evidence could include a combination of:

- purchase orders from the airline or shipping line (for example, a stores order from a foreign airline indicating that the stores are for use on international flights);
- Customs approval to load duty-free stores;
- delivery dockets or receipts signed by the master or other officer evidencing delivery of the stores or spare parts directly to the ship or aircraft; and
- shipping routes and schedules or flight timetables, which may provide evidence of the international voyage.

Private vessels

79. For supplies to private ships or aircraft, a supplier has evidence that the ship or aircraft departed on an international voyage if the supplier has a copy of the final certificate of clearance issued by Customs. A supplier may obtain a copy of this certificate immediately before departure or a copy may be forwarded to the supplier by the recipient, subsequent to departure.

80. If the supplier is not able to obtain a copy of the final certificate of clearance, the supplier should sight and retain the following evidence to demonstrate that the aircraft or yacht has a destination outside Australia:

- a copy of a small craft cruising permit with an imminent expiry date or temporary import documents;
- a copy of the recipient's passport; and
- a signed declaration to the effect that the goods are for use as stores or spare parts on an international flight or voyage.

81. Such a declaration should include a description of the goods supplied, information on the date of departure, destination, and name of the vessel or call sign of the aircraft. An example of the statement that could be made in respect of stores for a visiting yacht is:

> Purchaser's Statement to the Commissioner of Taxation
>
> I, ……. of … … …, hereby declare that the goods described above are to be shipped as stores or spare parts for use, consumption or sale on board [….name of ship….] while on a voyage to a destination outside Australia. The goods will not be used, consumed or sold prior to the commencement of a voyage where the next port of call is outside Australia.
>
> …….
>
> Signature of Purchaser

82. However, we do not consider a declaration alone to be sufficient to demonstrate that the requirements of item 5 are met.

83. In addition to the evidence listed in paragraph 80, other supplementary evidence may be available, such as evidence of foreign ownership or registration of the vessel or aircraft, or a Customs export entry for Australian vessels being exported under their own power.

84. An appointment for clearance to depart is usually made less than four days before a yacht's departure from Australia. The Commissioner considers that it is reasonable to conclude that ship's stores and spare parts supplied after this time for use, consumption or sale on that private vessel are for use, consumption or sale on an international voyage. However, goods supplied before this time are not accepted as having the character of stores for use, consumption or sale on an international voyage unless there is clear evidence of their intended use for that purpose.

85. A supplier of GST-free aircraft's and ship's stores and spare parts should retain the usual commercial evidence such as purchase orders, invoices, receipts and delivery dockets.

86. If a purchaser departing on a small craft is unable to provide sufficient documentary evidence to their supplier to support a GST-free supply of ship's stores, the purchaser may be eligible for a refund of GST under the Tourist Refund Scheme for goods purchased at GST-inclusive prices.[27] Purchasers need to comply with the conditions of the Scheme, which include having the goods and a tax invoice available for sighting by a Customs officer on departure.

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27 Departing passengers (but not persons employed as crew members) may be entitled to a refund of GST on goods purchased within 30 days of departure from Australia, if the conditions of the Tourist Refund Scheme are met. See Division 168 and regulations 168-5.01 to 168-5.17.

87. The types of records available to a supplier will vary with the circumstances of the supply. A full examination of types of documentation for exports generally is set out in GSTR 2002/6. Appendix C to that Ruling lists the types of transport documentation a supplier may have, depending on the mode of transport used to export the goods. Appendix D 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 with the export of those goods. The lists of documents described in the Appendices are not exhaustive but merely offer guidance as to the types of documents available. Suppliers may have other evidence to support their knowledge that the goods were exported and the elements of item 5 were met.

Detailed contents list

88. Below is a detailed content list for this Ruling:

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Commissioner of Taxation
26 March 2003

Previous draft:
Previously released as part of GSTR 2001/D6

Related Rulings/Determinations:

TR 2006/10; GSTR 2001/8; GSTR 2002/6; GSTR 2003/4; MT 2010/1; GSTE 2013/1

Subject references:

- aircraft
- aircraft stores
- Australia
- connected with Australia
- destination outside Australia
- documentation
- export
- exported
- export of goods
- exporter
- external territories
- flight
- goods
- GST-free
- import
- imported
- imported goods
- international
- international flight
- international voyage
- Kyoto Convention
- overseas destination
- recipient
- ship
- ship's store
- spare parts
- supplied
- supplier
- supply
- voyage

Legislative references:

- ANTS(GST)A99 9-5
- ANTS(GST)A99 Div 38
- ANTS(GST)A99 38E
- ANTS(GST)A99 38-185
- ANTS(GST)A99 38-185(1)
- ANTS(GST)A99 38-185(1) 1
- ANTS(GST)A99 38-185(1) 2
- ANTS(GST)A99 38-185(1) 3
- ANTS(GST)A99 38-185(1) 4
- ANTS(GST)A99 38-185(1) 5
- ANTS(GST)A99 38-185(1) 6
- ANTS(GST)A99 38-185(1) 7
- ANTS(GST)A99 38-185(2)
- ANTS(GST)A99 195-1
- CA 1901 5C
- CA 1901 58
- CA 1901 129
- CA 1901 130C
- S&SLA 1973 7
- ST(E&C)A 1935 81
- TAA 1953 Sch 1 382-5(1)
- TAA 1953 Sch 1 Div 358

Case references:

- *Board of Trade v. Baxter* [1907] AC 373
- *BP Australia Ltd v. Bissaker* [1987] 163 CLR 106
- *DC of T v Stewart & Anor* (1984) 154 CLR 385; (1984) 84 ATC 4146; (1984) 15 ATR 387

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