

***GSTR 2005/6A2 - Addendum - Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999***

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## Addendum

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### **Goods and Services Tax Ruling**

Goods and services tax: the scope of subsection 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*

This Addendum amends Goods and Services Tax Ruling GSTR 2005/6 to reflect amendments to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), which were made by *Tax Laws Amendment (2005 Measures No. 1) Act 2005*. In particular, it reflects the amendment that inserted paragraph 9-25(5)(c) into the GST Act. Paragraph 9-25(5)(c) ensures that a supply is connected with Australia if it is the supply of a right or option to acquire another thing and the supply of that other thing would be connected with Australia. The amendment applies to supplies made on or after 1 October 2005. The Addendum also updates GSTR 2005/6 for consequential amendments made to Division 84 of the GST Act by *Tax Laws Amendment (2005 Measures No. 1) Act 2005*.

The Addendum also makes further minor amendments to update references to the *Taxation Administration Act 1953*; cross reference other GST public rulings that have since issued; correct other minor non-technical errors; and update the references section of GSTR 2005/6.

#### **GSTR 2005/6 is amended as follows:**

##### **1. Preamble**

Omit 'section 37 of'; substitute 'section 105-60 in Schedule 1 to'.

# GSTR 2005/6

## 2. Paragraphs 8 and 9 and the note to paragraph 9

Omit paragraphs 8 and 9 and the note; substitute:

8. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely on this Ruling on and from its date of issue for the purposes of section 105-60 in Schedule 1 to the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and the Commissioner's view of when you can rely on this interpretation of the law in GST public and private rulings.

8A. Changes made to this Ruling by Addenda that issued on 24 April 2007 and 2 July 2008 have been incorporated into this version of the Ruling.<sup>1A</sup> You can rely on the changes made to the Ruling by each Addendum for the purposes of section 105-60 in Schedule 1 to the *Taxation Administration Act 1953* from the date of issue of the relevant Addendum. If the Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, the Addendum prevails.

9. If you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of the relevant Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the previous ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of the relevant Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the previous ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

## 3. Paragraph 10

At the end of the table; insert:

<b>GSTD 2006/2</b>	Goods and services tax: does an Australian entity make a taxable supply when it supplies repair services under a warranty given by a non-resident manufacturer?
<b>GSTR 2007/2</b>	Goods and services tax: in the application of paragraph (b) of item 3 in the table in subsection 38-190(1) of the A New Tax System (Goods and Services Tax) Act 1999 to a supply, when does 'effective use or enjoyment' of the supply 'take place outside Australia'?

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<sup>1A</sup> Refer to each Addendum to see how that Addendum amends this Ruling.

<b>GSTD 2007/3</b>	Goods and services tax: if a non-resident entity owns residential rental premises in Australia and an Australian accountant makes a supply to that entity consisting of advice about the premises and tax return preparation services, is that supply wholly or partly GST-free if made on or after 1 April 2005?
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**4. Paragraph 18**

At the end of the paragraph insert footnote 1B:

<sup>1B</sup> Refer to GSTD 2006/1 Goods and Services Tax: is a payment from a non-resident car manufacturer to an Australian distributor under an offshore warranty chargeback arrangement subject to GST? Also refer to GSTD 2006/2 Goods and services tax: does an Australian entity make a taxable supply when it supplies repair services under a warranty given by a non-resident manufacturer?

**5. Paragraph 28**

At the end of the paragraph insert new footnote 3A:

<sup>3A</sup> See also Goods and Services Tax Determination GSTD 2007/3 Goods and services tax: if a non-resident entity owns residential rental premises in Australia and an Australian accountant makes a supply to that entity consisting of advice about the premises and tax return preparation services, is that supply wholly or partly GST-free if made on or after 1 April 2005?

**6. Paragraph 105**

Omit '96 to 9'; substitute '96 to 99'.

**7. Footnote 26**

Omit the text; substitute:

Refer to paragraphs 25 to 30 of GSTR 2001/8 and paragraph 382-5(1)(a) in Schedule 1 to the *Taxation Administration Act 1953*.

**8. Flowchart 1, bottom left hand box under Q.2**

Omit 'The supply is GST-free if subsections 38-190(2), (3) or (3A) do not apply'; substitute 'The supply is GST-free if subsections 38-190(2), (2A) or (3) do not apply'.

**9. Paragraph 221**

Omit '38 190(3)'; substitute '38-190(3)'

**10. Paragraph 419**

Omit 'on a delivered duty paid (or unpaid) terms of sale'; substitute 'on delivered duty paid (or unpaid) terms of sale'.

# GSTR 2005/6

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**11. Paragraph 521**

- (a) Table column heading  
Omit 'another entity' '; substitute 'another entity'
- (b) Last column, at 'E.g. No. 29'  
Omit 'Not necessary o consider'; substitute 'Not necessary to consider'

**12. Paragraph 597**

Omit the extra full stop from the end of the third sentence.

**13. Footnote 100**

Omit the text; substitute:

Refer to paragraphs 25 to 30 of GSTR 2001/8 and paragraph 382-5(1)(a) in Schedule 1 to the *Taxation Administration Act 1953*.

**14. Paragraph 796**

Omit the second sentence; substitute:

*This supply is not connected with Australia as it is not done in Australia, is not made through an enterprise that the Swiss accounting firm carries on in Australia and is not a supply of a right or option to acquire another thing the supply of which would be connected with Australia.*

**15. Paragraph 803**

Omit the extra full stop at the end of the second sentence.

**16. Paragraph 807**

Omit the second sentence; substitute:

*This supply is not connected with Australia as it is not done in Australia, is not made through an enterprise that Swiss Co carries on in Australia and is not a supply of a right or option to acquire another thing the supply of which would be connected with Australia.*

**17. Paragraph 808**

Omit the paragraph; substitute:

808. *Section 84-5 has the effect of treating a supply that is either not connected with Australia or connected with Australia because of paragraph 9-25(5)(c)<sup>108A</sup> as a taxable supply if the supply is for consideration, the recipient is registered or required to be registered, and the recipient of the supply acquires the thing supplied solely or partly for the purpose of an enterprise carried on by the recipient in Australia, but not solely for a creditable purpose.*

**18. Paragraph 849**

Before the last sentence, insert:

*Further, none of these supplies are rights or options to acquire another thing the supply of which would be connected with Australia.*

**19. Footnote 110**

Omit the text; substitute:

Refer to paragraph 84-5(1)(c).

**20. Paragraph 900**

Omit 'another entity, that is a service. with the'; substitute 'another entity, that is a service, with the'.

**21. Related Rulings/Determinations list**

Insert:

GSTD 2006/1

GSTD 2006/2

GSTD 2007/3

GSTR 2007/2

**22. Legislative References list**

(a) Omit:

- ANTS(GST)A 1999 38-190(3A)

- ANTS(GST)A 1999 84-5(1)(a)

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<sup>108A</sup> That is, a supply connected with Australia because of paragraph 9-25(5)(c) can continue to be reverse charged. If the supply is a taxable supply under both sections 9-5 and 84-5 GST is only payable under section 84-10 (instead of section 9-40): subsection 84-10(3).

# GSTR 2005/6

- TAA 1953 37
  - TAA 1953 70(1)(d)
- (b) Insert:
- ANTS(GST)A 1999 9-25(5)(c)
  - ANTS(GST)A 1999 9-40
  - ANTS(GST)A 1999 84-5(1)(c)
  - ANTS(GST)A 1999 84-10
  - ANTS(GST)A 1999 84-10(3)
  - TAA 1953 Sch 1 105-60
  - TAA 1953 Sch 1 382-5(1)(a)

This Addendum explains our view of the law as it applies both before and after its date of issue. You can rely upon this Addendum on and from its date of issue for the purpose of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*. If this Addendum conflicts with a previous private ruling that you have obtained or a previous public ruling, this Addendum prevails. However, if you have relied on a previous ruling (including the public ruling that the Addendum amends), you are protected in respect of what you have done up to the date of issue of this Addendum or, if there is a change to the legislation, you are protected in respect of what you have done up to the date the legislative change takes effect. This means that if you have relied on the earlier ruling and have underpaid an amount of GST, you are not liable for the shortfall prior to either the issue date of this Addendum or the date the legislative change takes effect, as appropriate. Similarly, if you have relied on the earlier ruling you are not liable to repay an amount overpaid by the Commissioner as a refund.

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**Commissioner of Taxation**

2 July 2008

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ATO references

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