GSTR 2001/D6 - Goods and services tax: Exports of goods

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There is an Erratum notice for this document.
This document has been finalised.

Draft Goods and Services Tax Ruling
Goods and services tax: Exports of goods

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Preamble

This document is a draft for industry, professional and community comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers and practitioners. When the final Ruling is officially released it will be a public ruling for the purposes of section 37 of the ***Taxation Administration Act 1953*** *and may be relied upon by any person to whom it applies.*

What this Ruling is about

1. This Ruling is about the operation of section 38-185 of *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act') which sets out when supplies of goods are GST-free exports.

2. The Ruling explains the requirements for a supply of goods to be a GST-free export under the items (other than item 7) listed in the table in subsection 38-185(1) of the GST Act.

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

   (a) the meaning of 'the supplier exports';

   (b) when the export of goods occurs;

   (c) when an exporter satisfies the condition that the export of goods must occur within specified time limits; and

   (d) the types of documents that a supplier needs to keep as evidence of satisfying the requirements for an export to be GST-free.

4. We also address in this Ruling the operation of subsection 38-185(3) of the GST Act and how it expands the scope of items 1 and 2 of the table in subsection 38-185(1) in certain circumstances.

5. Section 38-185 applies only to a supply of goods.[1] This Ruling only covers supplies of goods made by way of sale. It does not cover supplies of goods made in other ways such as by way of lease or hire.

[1] 'Goods' is defined in section 195-1 of the GST Act to mean any form of tangible personal property.

6. This Ruling does not address supplies of things, such as services or rights, for consumption outside Australia, which are covered by section 38-190 of the GST Act.

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

Date of effect

8. This Ruling, when finalised, applies on and from 1 July 2000. You can rely upon this Ruling, when finalised, 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.

Context

9. If a supply of goods is connected with Australia that supply is a taxable supply if 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.

10. Goods that are exported are not for consumption in Australia and the supply of those goods is GST-free where the requirements of one of the items in the table in subsection 38-185(1) are met.

11. Each item of the table in subsection 38-185(1) (other than item 7) is set out in full in the 'Explanations' part of this Ruling.

Ruling

Items 1 to 6 of subsection 38-185(1)

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

13. Items 1 and 2 require that the goods supplied are exported by the supplier. Under items 3 and 4, which deal with the export of aircraft or ships, the recipient must export the aircraft or ship.

14. The word 'export' is not defined in the GST Act and therefore it takes its ordinary meaning to send goods to other countries or places for sale, exchange etc, or take goods out of one country with the intention of landing them in another.

15. Under items 1 to 4 the goods must be exported from Australia. For the purposes of the GST Act, 'Australia' includes all land territory (except external territories), the coastal sea and the installations described in section 5C of the *Customs Act 1901* ('the Customs Act').

16. Items 5 and 6 cover the topics of export of goods that are to be consumed on international flights or voyages and export of goods used to repair etc. imported goods, respectively. The word export only occurs in the topic description but the item requirements are that the flight or voyage has a destination outside Australia and the imported goods have a destination outside Australia. These requirements are consistent with the meaning we give to exported goods. Australia has the meaning described in paragraph 15.

Item 1– Export of goods - general

17. Under item 1 a supply of goods is GST-free where the *supplier exports* them from Australia and the export occurs within a specified time period.

18. The requirement that the supplier is the entity that exports the goods is satisfied where:

(a) the supplier is responsible for delivering the goods on board a ship or to an aircraft operator; and

(b) that ship or aircraft operator has been engaged, either by the seller or the buyer (or by another party acting on behalf of the seller or buyer), to carry those goods to an overseas destination.

19. A supplier, therefore, exports the goods where goods are sent from Australia to another country pursuant to a contract of sale the terms of which are, for example, FOB[2], CIF[3] or DDP[4]. This is because under these terms the supplier is responsible for delivering the goods on board a ship or to an aircraft operator that has been engaged to carry those goods to an overseas destination.

20. However, where the goods are sold, for example, on FAS[5] terms, meaning that the seller is responsible for placing the goods alongside the ship, the supplier is not the entity that exports the goods.

21. A supplier is considered responsible for delivery of the goods on board the ship or to the aircraft operator even if the supplier arranges for another party such as a freight forwarder, consolidator, air

[2] Free on board – see further Appendix D.
[3] Cost insurance freight - see further Appendix D.
[4] Delivered duty paid - see further Appendix D.
[5] Free alongside ship - see further Appendix D.

express courier, postal agency or similar international transport provider to deliver the goods on behalf of the supplier.

22. It is not necessary that the supplier contracts with the ship or aircraft operator to carry the goods to an overseas destination. However, it is expected that the supplier would be issued with a copy of the transport documents indicating that the goods have been delivered on board the ship or to the aircraft operator and have a destination outside Australia.

23. A supplier who is not the exporter (as outlined in paragraphs 17 – 22) may still be treated as the exporter. This is where the recipient is the exporter and the requirements of subsection 38-185(3) are met (see paragraphs 101 to 111).

24. For a supply of goods to be GST-free under item 1 the supplier must export the goods before, or within a 60 day period (or such further period as the Commissioner allows). The 60 day period commences when the supplier either receives any consideration or issues an invoice for the supply.

25. Given that goods can only leave Australia on board a ship or aircraft,[6] the time at which goods are exported from Australia is the time at which the ship or aircraft departs its **final** Australian port or airport and clears the territorial limits of Australia (refer the definition of Australia discussed at paragraphs 131 to 136 in the Explanation section of the Ruling).

26. Accordingly, the timing requirement is met if the ship or aircraft, with the goods on board for landing at a place outside Australia, departs its final Australian port or airport and leaves Australia before, or within 60 days (or such further period as the Commissioner allows) after the earlier of:

(a) the day on which the supplier receives any of the consideration for the supply; or

(b) the supplier gives an invoice for the supply.

27. However, if the supplier delivers the goods on board the ship or to an aircraft operator or hands over possession of the goods to an international transport provider[7] for delivery on board the ship or to an aircraft operator before or within the 60 day period, the Commissioner accepts that the timing requirement is met. This is provided that the supplier has completed all other actions necessary to export the goods, for example, obtained necessary permits and Customs approvals.

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[6] There may be other methods of exporting goods in future, for example, pipelines, cables or spacecraft, but this Ruling does not address these potential modes of export.

[7] International transport provider includes a freight forwarder, consolidator, air express courier, postal agency etc.

28. In these circumstances, the Commissioner automatically grants an extension of time equal to the additional time required for the export to occur if the ship or aircraft departs its final Australian port or airport and leaves Australia after the end of the 60 day period.

29. Suppliers unable to deliver the goods on board a ship or to an aircraft operator or hand over possession of the goods to an international transport provider for delivery on board the ship or to an aircraft operator before the end of the 60 day period may apply to the Commissioner for an extension of time.

30. If the goods are a ship or an aircraft that the supplier exports under its own power those goods are exported when the ship or aircraft departs its final Australian port or airport and leaves Australia for a destination outside Australia. To satisfy the timing requirement, that ship or aircraft must depart its final Australian port or airport and leave Australia before the end of the 60 day period, or such further time as the Commissioner allows.

31. The supplier must have sufficient documentary evidence to show that all of the requirements of this item are met. We expect that the supplier will be able to obtain such documentary evidence either before the goods are exported or within a reasonable period of time after the goods have been exported.

32. Provided that there is no information to the contrary, a supplier will have sufficient documentary evidence where the supplier has documents that would enable a person independent of the transaction to reasonably conclude that:

(a) there was a supply of goods;

(b) the supplier was the entity that exported the goods; and

(c) the goods were exported from Australia and within the specified time limits.

33. The types of documents available to a supplier will vary depending on the circumstances of the supply. Appendix B lists the types of transport documentation that a supplier may have depending on the mode of transport used to export the goods. Appendix C lists the types of commercial and other documentation that a supplier may have to explain the transaction. The lists of documents described in these Appendices are not exhaustive but offer guidance as to the types of documents available.

34. With a combination of the documents listed in Appendices B and C, the supplier should be able to demonstrate that the elements of item 1 are satisfied. The information normally contained in these documents is of a kind that would typically demonstrate that the elements of the item are satisfied. Suppliers, of course, may have other evidence which demonstrates that the requirements are met.

35. As noted in paragraph 32, one of the requirements which must be evidenced is that the goods were exported from Australia. One way in which we consider that it is reasonable for an independent party to conclude that goods were exported is where the supplier:

(a) has a clear Export Clearance Number ('ECN') in respect of an export entry for those goods; and

(b) holds a valid transport document issued by a shipping line or airline showing:

(i) that the goods were received on board the ship or by the aircraft operator; and

(ii) that the ship or airline has been contracted to carry those goods to a destination outside Australia.

However, this is provided that there is no other information to indicate that the goods were not exported, such as, for example, advice from the Australian Customs Service that the export entry has not been acquitted against the outwards cargo manifest of a departing ship or aircraft.

36. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported, that is, the goods were not sent from Australia to a place outside Australia, this gives rise to an adjustment event. An adjustment event includes an event which has the effect of causing a supply to become a taxable supply.[8] See further Example 12 at paragraph 201 of this Ruling.

37. Suppliers may become aware that the goods were not exported through the course of their own actions or as a result of information supplied by others.

38. An adjustment event also arises if the goods are not exported before the end of the 60 day period (or such further period allowed by the Commissioner).

39. If the adjustment event occurs in the same tax period in which the GST on the supply is attributable, an adjustment does not arise. However, if the GST on the supply would have been attributable to an earlier tax period, the supplier has an increasing adjustment equal to the amount of GST now payable on that supply.

40. Adjustments for adjustment events are attributed to the tax period in which the supplier becomes aware of the adjustment.[9]

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[8] Section 19-10 and paragraphs 62 and 63 of GSTR 2000/19 – Goods and Services Tax: making adjustments under Division 19 for adjustment events.

[9] Subsection 29-20(1).

41. Further explanation of item 1 is provided at paragraphs 121 to 204 of the Explanation section of the Ruling. Also documentary evidence is discussed further at paragraphs 374 to 389.

Item 2 – Export of goods – supplies paid for by instalments

42. Under item 2 a supply of goods is GST-free where the supplier exports them from Australia and the export occurs within a specified time period.

43. However item 2 only applies where the consideration is provided in instalments and it is an express or implied term of the contract that the goods are to be exported (for example, delivery outside Australia).

44. The requirement that the supplier is the entity that exports the goods is satisfied in the same manner as described in item 1.

45. A supply of goods is GST-free if the supplier exports the goods before, or within a 60 day period (or such further period as the Commissioner allows). The 60 day period commences when the supplier either receives any consideration for the final instalment or issues an invoice for that final instalment.

46. The timing requirement is satisfied in the same manner as outlined in item 1 at paragraphs 24 to 30.

47. The supplier must have sufficient documentary evidence to show that all of the requirements of this item are met. We expect that the supplier will be able to obtain such evidence either before the goods are exported or within a reasonable period of time after the goods have been exported.

48. In addition to the evidence required under item 1, a supplier needs evidence that the supply was made under a contract that required the goods to be exported, and that the consideration is or was provided in instalments. The information normally contained in commercial documents of the kind referred to in Appendix B would typically demonstrate that these elements of the item are satisfied.

49. If a supplier having supplied the goods GST-free subsequently becomes aware that the goods were not exported or not exported within the specified time limit, this gives rise to an adjustment event (refer paragraphs 36 to 40 above).

50. Further explanation of item 2 is provided at paragraphs 205 to 219 of the Explanations section of the Ruling. Also documentary evidence is discussed further at paragraphs 374 to 380 and 390 to 391.

Item 3 - Export of aircraft or ships

51. Item 3 applies to the supply of aircraft or ships.

52. A supply of an aircraft or ship is GST-free under item 3 but only if the recipient of the aircraft or ship exports it from Australia under its own power within a 60 day period (or such further period as the Commissioner allows).

53. We consider that the recipient exports it where the recipient, or a party engaged by the recipient, physically navigates the aircraft or ship outside Australia.

54. Where *the supplier exports* the ship or aircraft the supply is not GST-free under item 3. It may be GST-free under item 1.

55. The 60 day period commences when the recipient (or another person at the recipient's request) takes physical possession of the aircraft or ship.

56. A ship or aircraft is exported when the ship or aircraft departs its final port or airport and leaves Australia for a destination outside Australia.

57. Accordingly, the timing requirement is satisfied if the ship or aircraft departs its final Australian port or airport and leaves Australia before the end of the 60 day period.

58. The supplier must have sufficient evidence to show that all of the requirements of this item are met.

59. Provided that there is no information to the contrary, a supplier will have sufficient documentary evidence where the supplier has documents that would enable a person independent of the transaction to reasonably conclude that:

(a) there was a supply of a ship or aircraft;

(b) the recipient was the entity that exported the ship or aircraft; and

(c) the export occurred and within the specified time limit.

60. In most cases the supplier will obtain this evidence from the recipient after departure, or at a time immediately before departure.

61. With a combination of the documents listed in Appendices B and C, the supplier should be able to demonstrate that the elements of item 3 are satisfied. Suppliers, of course, may have other evidence which demonstrates the requirements are met.

62. One way in which we consider that it is reasonable for an independent party to conclude that the ship or aircraft was exported is where the supplier:

(a) has a clear ECN in respect of an export entry for the ship or aircraft; and

(b) holds a copy of the final certificate of clearance issued by Customs which shows a destination outside Australia.

However, this is provided that there is no other information to indicate that the goods were not exported.

63. If a supplier having supplied the aircraft or ship GST-free subsequently becomes aware that the aircraft or ship was not exported or not exported within the specified time, this gives rise to an adjustment event (refer further paragraphs 36 to 40 above).

64. Further explanation of item 3 is provided at paragraphs 220 to 232 of the Explanations section of the Ruling. Also documentary evidence is discussed further at paragraphs 374 to 380 and 392 to 394.

Item 4 - Export of aircraft or ships – paid for by instalments

65. Under item 4 a supply of an aircraft or ship is GST-free but only where the recipient exports it from Australia and the export occurs within a specified time period.

66. However item 4 only applies where the consideration is provided in instalments and it is an express or implied term of the contract that the ship or aircraft is to be exported.

67. We consider that 'the recipient exports' it has the same meaning as in item 3.

68. A supply is GST-free if the recipient exports the ship or aircraft before, or within a 60 day period (or such further period as the Commissioner allows). The 60 day period commences on the earlier of the supplier receiving any consideration for the final instalment, the supplier issuing an invoice for that final instalment or the supplier delivering the ship or aircraft to the recipient (or person nominated by the recipient).

69. The timing requirement is satisfied if the ship or aircraft departs its final Australian port or airport and leaves Australia before the end of the 60 day period.

70. In addition to the evidence required under item 3, a supplier needs evidence that the supply was made under a contract that required the goods to be exported, and that the consideration is or was provided in instalments.

71. Such additional evidence is the same as described under item 2 (refer paragraph 48 above).

72. An adjustment event arises in the same circumstances as described in paragraphs 36 to 40 above.

73. Further explanation of item 4 is provided at paragraphs 233 to 242 of this Ruling. Also documentary evidence is discussed further at paragraphs 374 to 380 and 395 to 396.

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

74. Under item 5 a supply of goods for use, sale or consumption on an international flight or voyage may be GST-free. This item applies to supplies of goods that are aircraft's stores or spare parts, and supplies of goods that are ship's stores or spare parts.

75. Aircraft's stores means stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft.[10] Ship's stores means stores for the use of the passengers or crew of a ship, or for the service of the ship.[11]

76. Stores includes all forms of 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.[12]

77. Stores also includes non-consumable goods such as safety equipment. 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.

78. Goods brought on board a ship or aircraft by passengers or crew that are their personal belongings, or are for their private use, are not considered to be stores for the purpose of item 5.[13]

79. Spare parts are parts or components of a ship or aircraft that are intended to be affixed to a ship or aircraft to replace defective parts or components whether or not they are supplied for immediate fixture.

80. For a supply of aircraft's or ship's stores or spare parts to come within item 5, the supplies must be for use, sale or consumption on a ship or aircraft that has a destination outside Australia.

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[10] Section 130C of the *Customs Act 1901*.
[11] Section 130C of the *Customs Act 1901*.
[12] Kyoto Convention 2000, Annex J.
[13] These goods could be supplied to the passenger GST-free under another item, for example, under the sealed bag scheme or Customs Barrier rules in item 7.

81. The supplier, therefore, must be aware of, and have evidence of, the intended specific use of the goods as stores or spare parts on board an aircraft or ship which is on, or is embarking on, an international flight or voyage.

82. A supplier may be able to determine whether a supply of aircraft's or ship's stores or spare parts is for use, consumption or sale on board an aircraft or a ship by the very nature of the goods themselves and the quantity supplied. Further indicators may be the delivery of the goods directly to the aircraft or ship or by representations made by the recipient (the ship or aircraft operator).

83. An international flight or voyage is a flight or voyage that has a destination outside Australia, whether or not part of the flight or voyage involves a journey between places in Australia. We also consider that a flight or voyage commencing outside Australia for a destination in Australia is an international flight or voyage within the meaning of item 5. This is consistent with the meanings of 'international flight' and 'international voyage' in the Customs Act.[14]

84. For a voyage or flight to have a destination outside Australia, a ship must 'lay anchor', or an aircraft must land at a specific 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.

85. A journey between places in Australia will not be considered 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. The distinction may be temporal, geographic or purposive.

86. The status of the particular flight or voyage, for the purposes of item 5, must be determined at the point in time at which 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.

87. For practical purposes, where Customs approve the up lifting of duty free aircraft's or ship's stores[15] or spare parts 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.

[14] See section 130C of the *Customs Act 1901*.
[15] Approved under section 129 of the *Customs Act 1901*.

88. For a supplier to make GST-free supplies 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 the use, consumption or sale on board an aircraft or ship which is on, or is embarking on, an international flight or voyage.

89. Documentary evidence is discussed at paragraphs 374 to 380 and 395 to 396 of the Explanations section of the Ruling.

90. If a supplier having supplied the goods GST-free subsequently becomes aware that the goods were not for use, sale or consumption on board an international flight or voyage, this gives rise to an adjustment event (refer paragraphs 36 to 40 above).

91. Further explanation of item 5 is provided at paragraphs 243 to 279 of the Explanation section of the Ruling.

Item 6 – Export of goods used to repair etc. imported goods

92. Under item 6 a supply of goods is GST-free if the supply of goods is made in the course of repairing, renovating, modifying or treating other goods from outside Australia (the imported goods) whose destination is outside Australia.

93. The supply is only GST-free if :

(a) the goods are attached to, or become part of, the other goods; or

(b) the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat other goods.[16]

94. A supply of goods is 'in the course of' repairing, renovating modifying or treating other goods, if the person who is carrying out the repair, renovation, modification or treatment makes the supply.

95. We also consider that a supply of goods to the owner of the other goods is supplied 'in the course of' repairing, renovating, modifying or treating', if it is the owner of those goods who carries out the repair, renovation, modification or treatment.

96. The terms 'repairing', 'renovating', 'modifying' and 'treating' are not defined in the GST Act and therefore take their ordinary meanings. This is discussed further at paragraphs 291 to 304 of the Explanations section of the Ruling.

[16] Subsection 38-185(1) Item 6 (a) and (b).

97. For item 6 to apply, the imported goods must, at the time of their arrival in Australia, have a destination outside Australia. The Commissioner accepts that if those goods are exported as soon as practicable after the repair, renovation, modification or treatment, that the goods have a destination outside Australia. This means that there must be a temporal link or nexus between the importation and the repair, renovation, modification or treatment and the export.

98. A supplier needs evidence to show that the goods being repaired, renovated, modified or treated are from outside Australia and have a destination outside Australia. This is regardless of whether the supplier or the owner imports and exports the goods.

99. If a supplier having supplied the goods GST-free subsequently becomes aware that the goods were not supplied in the course of repairing, renovating, modifying or treating other goods from outside Australia whose destination is outside Australia, this gives rise to an adjustment event (refer paragraphs 36 to 40 above).

100. Further explanation of item 6 is provided at paragraphs 280 to 314 of this Ruling.

Subsection 38-185(3) – supplier treated as exporter for the purposes of items 1 and 2

101. Under subsection 38-185(3) a supplier who has not exported the goods (as explained at paragraphs 17 to 22), is treated as having exported them for the purposes of items 1 or 2 if the following conditions are met:

(a) before the goods are exported, the supplier supplies them to an entity that is not registered or required to be registered;
(paragraph 38-185(3)(a))

For purposes of this condition, a supplier has 'supplied them' when the goods are delivered in accordance with the contract of sale. Where the contract of sale requires physical delivery to a third party who is acting for the buyer (for example, a freight forwarder, consolidator etc) such delivery constitutes a supply to the buyer/recipient not to the third party.

(b) that entity exports the goods from Australia;
(paragraph 38-185(3)(b))

For purposes of this condition, 'entity exports the goods' means the recipient is responsible for delivering the goods on board a ship or to an aircraft operator that has been engaged to carry those goods to an overseas

destination and includes where the recipient engages an international transport provider to carry out the export.

(c) the goods have been entered for export within the meaning of section 113 of the *Customs Act 1901; (paragraph 38-185(3)(c))*

This condition is met where an export entry document has been lodged with Customs

(d) since their supply to that entity, the goods have not been altered or used in any way, except to the extent (if any) necessary to prepare them for export; and *(paragraph 38-185(3)(d))*

For purposes of this condition, activities such as packaging, wrapping, cleaning, disinfecting, dismantling or testing are considered 'necessary to prepare' the goods for export, where it is not reasonable, given the nature of the goods, to export those goods without carrying out that activity.

(e) the supplier has sufficient documentary evidence to show that the goods were exported. *(paragraph 38-185(3)(e))*

As the recipient is the entity that actually exports the goods, the supplier must obtain and hold documents to show that the goods were exported. Without this evidence the supplier is not in a position to reasonably conclude that the goods were exported.

For purposes of this condition, documentary evidence is sufficient where it provides a reasonable basis for an independent party to conclude that the goods were exported. This is discussed further at paragraphs 356 to 368 in the Explanation section of the Ruling.

102. However if the goods are reimported into Australia, the supply is not GST-free unless the reimportation is a taxable importation (see further paragraph 114 below).

103. Paragraph 38-185(3)(e) specifically requires the supplier to have evidence that the goods have been exported. Under items 1 and 2 the export must occur within a 60 day period (or such further period as the Commissioner allows). We expect, therefore, that the supplier will obtain evidence of export within the 60 day period (or such further period as the Commissioner allows for export) or if obtained

after the end of this period, before the due date for lodgement of the next BAS.[17]

104. If the supplier is unable to obtain the documentary evidence within this time frame, the requirement that the supplier has sufficient documentary evidence is not met. Unless the supplier can take immediate action which the supplier knows will result in the supplier obtaining, without delay, the required documentary evidence, the requirements of paragraph 38-185(3)(e) are not met and the supply is a taxable supply.

105. If any of the other requirements of subsection 38-185(3) are not met, for example, the goods are not entered for export within the meaning of section 113 of the *Customs Act 1901*, the supply is not GST-free and the supplier is liable to pay GST in respect of the supply.

106. A supplier also needs sufficient documentary evidence to show that **all** the requirements of paragraphs 38-185(3)(a) to (d) are met. It is expected that the supplier would be able to obtain such documentary evidence either before the goods are exported or within a reasonable period of time after the goods have been exported.

107. Satisfaction of the requirements of subsection 38-185(3) means that the supplier is treated for the purposes of items 1 or 2 as the exporting entity. The GST-free status of the supply depends on the other requirements of item 1 or 2 being met. For instance, the export must occur within the specified time period.

108. If the recipient delivered the goods on board a ship or aircraft, or delivered them to an international transport provider for delivery on board the ship or to an aircraft before the end of the 60 day period, the Commissioner accepts (consistent with the approach outlined at paragraph 27 above where the supplier exports) that the timing requirement for export is met. This is provided that the recipient has completed all other actions necessary to export the goods.

109. In these circumstances, the Commissioner automatically grants an extension of time equal to the additional time required for the export to occur if the ship or aircraft departs its final Australian port or airport and leaves Australia after the end of the 60 day period.

110. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit or any of the requirements of subsection 38-185(3) are not met this gives rise to an adjustment event (refer paragraphs 36 to 40 above).

111. Further explanation of subsection 38-185(3) is provided at paragraphs 315 to 358 of this Ruling. Also documentary evidence is

[17] Business Activity Statement.

discussed further at paragraphs 358 to 368 of the Explanations section of the Ruling.

Subsection 38-185(2)

112. A supply covered by any of items 1 to 6 in the table in subsection 38-185(1) is *not* GST-free if the supplier reimports the goods into Australia.

113. Thus if the supplier imports the same goods into Australia after having exported them the supply of those goods is not GST-free. The supply is a taxable supply subject to GST.

114. If the supplier is treated as having exported the goods under subsection 38-185(3), subsection 38-185(2) does not apply. However subsection 38-185(3) provides that if the same goods are reimported into Australia after having been exported by the recipient, the supply is not GST-free unless the reimportation is a taxable importation.

Documentary evidence

115. If you make a GST-free supply, you are required to keep records that explain the transaction and all acts you engage in that are relevant to that supply.[18] This includes evidence that the goods were exported and within the specified time limits.

116. If a supplier is unable to obtain documentary evidence that would enable a party independent of the transaction to reasonably conclude that the elements of the relevant item are met, the supply is not GST-free.

117. Documentary evidence is discussed in more detail at paragraphs 374 to 407.

Chain sales

118. These are discussed at paragraphs 408 to 420 in the Explanations section of the Ruling.

Explanations (this forms part of the Ruling)

Items 1 to 6 in the table in subsection 38-185(1)

119. A supply of goods that involves the goods being physically removed from Australia is connected with Australia.[19] If the other

[18] Section 70 *Taxation Administration Act 1953.*
[19] Subsection 9-25(2).

requirements of section 9-5 are met the supply is a taxable supply. However, the supply is not a taxable supply if the supply is GST-free. The table in subsection 38-185(1) sets out supplies that are GST-free exports of goods.

120. 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). Each of these items, other than item 7, is considered below.

Item 1 – Export of goods – general

121. Item 1 of the table in subsection 38-185(1) provides that:

Export of goods – general	A supply of goods, but only if the supplier exports them from Australia before, or within 60 days (or such further period as the Commissioner allows) after: (a) the day on which the supplier receives any of the consideration for the supply; or (b) if, on an earlier day, the supplier gives an invoice for the supply – the day on which the supplier gives the invoice.

122. A supply of goods that are exported is GST-free where the elements of item 1 of the table in subsection 38-185(1) are satisfied. The elements are:

(a) there is a supply of goods;

(b) the supplier exports them from Australia; and

(c) the export occurs before or within a 60 day period (or such further period as the Commissioner allows).

Supply of goods

123. Section 38-185 applies to a supply of goods. A supply of goods is a supply of any form of tangible personal property.[20] Supplies of things, other than goods or real property, for consumption outside Australia may be GST-free under section 38-190.

124. Section 38-185 does not apply to the movement of goods within the same entity. For example, where an Australian branch of a non-resident company moves goods from the Australian branch to the non-resident Head Office, there is no supply of goods. A company cannot make supplies to itself.

[20] Refer the definition of goods in section 195-1.

Supplier exports goods from Australia

125. The supplier must be the entity that exports the goods from Australia for item 1 to apply. If the recipient exports the goods item 1 cannot be satisfied unless subsection 38-185(3) applies (see paragraphs 315 to 373).

Meaning of export

126. The term 'export' is not defined in the GST Act. Its ordinary meaning is 'to send (commodities) to other countries or places for sale, exchange etc.'[21]

127. Similarly, exportation refers to '…the sending of commodities out of a country, typically in trade.'[22]

128. The Federal Court of Australia commented on the meaning of export in *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517. At page 523, Beaumont, Gummow and Einfeld JJ stated:

> 'The ordinary meaning of 'export' is to send commodities from one country to another using the verb 'send' as indicating that which occasioned or brought about the carriage of the commodity from one country to another'.[23]

129. The Federal Court has considered the term export in the context of the Customs Act, where, like the GST Act, the term is not defined. In *Wesley-Smith v. Balzary* (1976-77) 14 ALR 681 Forster J said:

> 'Export in the first sense no doubt means taking of goods out of a proclaimed port or across a low water mark with the intention of landing them at some place beyond Australia'.[24]

130. We consider that these ordinary meanings apply in defining the word 'export' in the GST Act. For the purposes of section 38-185, to export goods is to physically send or take goods out of Australia with the intention that the goods be landed at a place outside Australia.

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[21] Macquarie Dictionary 3rd edition.
[22] Macquarie Dictionary 3rd edition.
[23] *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1922) 36 FCR 517 at page 523.
[24] (1976-77) 14 ALR 681 at p 688.

Meaning of Australia

131. Because the goods must have a destination outside of Australia, it is necessary to establish the boundaries of 'Australia'

132. 'Australia' is defined in the GST Act 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'.[25]

133. The *Acts Interpretation Act 1901* provides that:

> 'any reference in an Act… to Australia….shall be read as including a reference to the coastal sea of Australia'.[26]

134. Coastal sea[27] is defined as follows:

> 'in relation to Australia, means:
>
> (i) the territorial sea of Australia; and
>
> (ii) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Internal Territory,
>
> and includes the airspace over, and the sea-bed and subsoil beneath, any such sea'.

135. The outer limit of the territorial sea was extended to 12 nautical miles from the territorial sea baseline by a proclamation made in the *Seas & Submerged Lands Act 1973.*

136. This means that 'Australia' includes all land territory (except external territories), the coastal sea and the installations described in section 5C of the Customs Act.

Supplier exports

137. The question of whether the supplier exports, that is, whether the supplier sends or takes goods from Australia to another country, is to be answered by examining the role that the supplier plays in bringing about the removal of the goods from Australia.

138. If the part played by the supplier in bringing about the removal of the goods from Australia is sufficient to justify the description of the supplier as a sender of those goods out of Australia, the supplier is the exporter for the purposes of item 1.

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[25] Section 195-1.
[26] Section 15B(1)(b) of the *Acts Interpretation Act 1901.*
[27] Section 15B(4) of the *Acts Interpretation Act 1901.*

139. The policy intent for requiring the supplier to export is to ensure that the goods are not used or consumed in Australia. If the supplier exports the goods, the supplier knows that the goods are not used or consumed in Australia, and the goods can be supplied by the supplier GST-free.

140. Against this policy background, we consider that where a contract of sale involves the sale goods being physically removed from Australia, the *'supplier exports'* those goods from Australia where the supplier is responsible for delivering the goods on board a ship or to an aircraft operator that has been engaged (either by the supplier or the recipient or by some one acting on behalf of the supplier or recipient) to carry those goods to an overseas destination.

141. This approach recognises that the supplier has put the goods into a position which means that the goods are for export and not for use or consumption in Australia.

142. It follows that in the case of a contract of sale the terms of which are FOB, under which the buyer must contract at his or her own expense for the carriage of the sale goods from Australia to the overseas destination, we accept that the supplier exports those goods for the purposes of item 1. This is because under FOB terms of sale the supplier is responsible for delivering the goods on board the nominated ship at the nominated port of shipment.

143. It is not necessary for the supplier to have entered into the contract of carriage. However, it is expected that the supplier would be issued with a copy of the transport documents (for example, the bill of lading).

144. Under a contract of sale the terms of which are CIF the seller must contract at his or her own expense for the carriage of the goods to an overseas port. The supplier must deliver the goods on board the ship at the port of shipment at the agreed time. The buyer accepts delivery and receives the goods from the carrier at the destination port. The supplier exports those goods for the purposes of item 1.

145. A supplier does not, however, export the goods for the purposes of item 1 where the supplier is only responsible for placing the goods alongside the ship nominated by the buyer at the named port of shipment in Australia. This is the case where the goods are sold under a FAS contract.

146. Thus, for the supplier to be identified as the exporter of goods in respect of a contract for the sale of goods involving the removal of those goods from Australia, the documentary evidence must show that the goods were delivered by the supplier on board a ship or to an aircraft operator, and that the ship or aircraft operator has been contracted to carry the goods to a destination outside Australia.

Example 1 – Supplier exports – FOB terms of sale.

147. *Oz Wool Corporation, an Australian company, contracts to sell a bulk shipment of wool to China Knits Co. The sale price and terms of the contract are agreed on the basis that the Australian supplier makes delivery FOB Melbourne (Free on Board ship). Title to the wool and risk passes upon the seller delivering over the ship's rail. Oz Wool is advised of the shipment arrangements, and proceeds to bundle the wool and deliver it to the wharf. Oz Wool pays a stevedoring company to load the wool on board the foreign bound vessel, upon which the shipping line issues a bill of lading which states the destination as Hong Kong. The ship later departs Australia and the wool is eventually unloaded at an overseas port. As Oz Wool is responsible for delivering the goods on board the ship which has been engaged to carry the goods overseas, Oz Wool is the exporter.*

Example 2- Supplier exports – FCA terms of sale.

148. *Aussie Sweets Pty Ltd, an Australian food exporter, receives an urgent order from a luxury Fijian resort for 500 frozen cheesecakes. The terms of the sale require the Australian supplier to deliver the goods FCA (free carrier) to Pacific Air Cargo, an airline which operates throughout Australia and the Pacific. Aussie Sweets delivers the cheesecakes to the airline where they are packed in a refrigerated container on board a flight to Fiji. Upon receipt of the goods, Pacific Air Cargo issues an air waybill as evidence of the contract to carry the goods out of Australia. The Australian supplier is the exporter of the goods.*

Example 3 – Recipient exports – Ex-works terms of sale.

149. *Black Stump Coal Ltd is a mining company operating in central Queensland. The company makes a sale of 10000 tonnes of coal under an Ex-works contract to a foreign recipient. Delivery of the coal is made at the supplier's premises in Queensland, and risk passes to the recipient at this point. The recipient arranges for the coal to be carried by train from the mine to the coast where it is loaded on board a ship bound for Singapore. As Black Stump Coal is no longer responsible for the goods once they leave the mine, they are not responsible for the delivery on board the ship. The Australian supplier is not the exporter for the purposes of item 1. (The supplier may be treated as having exported the goods if all of the elements of subsection 38-185(3) are met – see paragraphs 315 to 373).*

150. Our approach in identifying whether the supplier exports is consistent with the approach of the Federal Court in *Australian Trade*

Commission v. Goodman Fielder Industries Ltd,[28] where the Court focused on the verb 'send' as indicating 'that which occasioned or brought about the carriage of the commodity from one country to another'.[29]

151. The facts in that case involved the Australian Wheat Board (AWB) supplying wheat to the overseas subsidiary of an Australian parent company. The written contract named the AWB as vendor and the Australian parent company as buyer.[30] The wheat was to be dispatched directly from the AWB to the overseas subsidiary. The contracts were the "Standard FOB Short Form Contract for Australian Wheat (Fixed Price)" prepared by the AWB. The AWB delivered the wheat directly to the ship that was chartered by the overseas subsidiary. The bills of lading were issued after the goods were loaded on board. The Australian parent company received the bills of lading but passed them onto the overseas subsidiary.

152. The Full Court had to examine this sale arrangement for the purpose of applying the 'export earnings' provisions of the *Export Market Development Grants Act 1974* ('the Grants Act'). The 'export earnings' of a person under the Grants Act includes consideration received in respect of goods sold and exported by that person. We consider this similar to the requirements of item 1 that there is a supply of goods and that the supplier exports them.

153. The question at issue was whether the involvement of the Australian parent company as a concurrent principal was such as 'to lead to the conclusion that, within the meaning of s 3A(1)(a) of the Grants Act, it was the [Australian] parent company which sold the wheat in Australia and exported it'.[31]

154. The Court looked at a number of factors including:

- which party was responsible for selling the wheat – the AWB;
- which party was buying the wheat - the subsidiary;

[28] (1992) 36 FCR 517.
[29] Ibid at p 523.
[30] Beaumont, Gummow and Einfeld JJ found, as a matter of general law, that the correct characterisation of the transaction was that the AWB sold the wheat to the overseas subsidiary and that the sale was brought about by the Australian parent. The position of the AWB was protected by the inclusion of the Australian parent company as principal, so that the AWB might look directly to it in Australia in default of performance by the overseas subsidiary.
[31] Above, note 28, at p523.

- which party was designated as the shipper on the bill of lading – the AWB (given that it was an FOB contract, shipper would refer in this instance to the entity that hands over the goods for carriage, as the buyer makes the contract of carriage);
- which party delivered the goods to the ship – the AWB;
- which party received the bills of lading– they were passed onto the subsidiary by the Australian parent company;
- which party chartered the ship – the charter-parties were made with the subsidiary; and
- the payment arrangements for the sale.

155. The Court looked at the ordinary meaning of export being 'to send commodities from one country to another using the verb "send" as indicating that which occasioned or brought about the carriage of the commodity from one country to another:..".[32]

156. The Court found that :

> 'the wheat was sold and exported by the AWB both in a practical and commercial sense…'[33]

157. The identification of the exporter has also been considered by the High Court of Australia in another context. In *Henty v. Bainbridge-Hawker* (1963) 36 ALJR 354 Owen J considered charges against an individual for various exporting offences committed under the Customs Act.

158. The defendant submitted that he could not be found to have been the exporter of prohibited exports, because whatever goods were in fact exported were sold free on board (FOB) to an overseas buyer. The defendant claimed that his obligations ceased when the goods were placed on board the ship in Sydney and therefore the overseas buyer was the exporter.

[32] Above, note 28, at p523.
[33] Above, note 28, at p523.

159. In response to this submission, Owen J identified the Australian seller as the exporter, stating that:

> 'For the purposes of this case it is sufficient to say that if, in the case of an f.o.b. contract with an overseas buyer, the seller places the goods on board a ship bound for foreign parts and engages[34] with the shipowner to carry them to the overseas buyer and the goods are carried overseas, the seller has, in my opinion exported the goods within the meaning of the Customs Act.'[35]

160. Our approach in identifying the exporter is also consistent with the approach of the New Zealand Court of Appeal in *Inland Revenue Commissioner (NZ) v. International Importing Ltd* 3 ATR 173; 72 ATC 6033. In that case the Court had to decide, for the purposes of establishing entitlement to an export incentive deduction available under the provisions of section 129B of the *Land and Income Tax Act 1954 (NZ),* whether goods sold by the respondent were exported from New Zealand by the respondent. Section 129B gave a benefit to a person that sold and exported the sale goods from New Zealand.

161. Richmond and Macarthur JJ commented that:

> '…The Legislature has not attempted for the purposes of s-129B to define the meaning of the word "export" and the Court can do no more than give to that word its ordinary meaning…. and to decide as a matter of fact and degree in individual cases whether the part played by the taxpayer in bringing about the removal of the goods from New Zealand was a sufficiently immediate and effective cause of that removal to justify the description of the vendor as a sender (or taker as the case may be) of those goods out of New Zealand. *(paragraph break inserted)*
>
> Whether or not a person "exports" goods seems to us to depend more on the actual part which he in fact played in bringing about their removal than upon the terms of the contract between himself and the buyer. It is to be noted, incidentally, that s 129B is not so worded as to require the taxpayer to be the owner of the goods at the time of export. The section only requires that he should be the owner of the goods at the time of sale.'[36]

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[34] Here engages is not in the sense that the seller makes the contract of carriage with the carrier. Under an FOB contract the buyer makes the contract of carriage with the carrier.

[35] *Henty v. Bainbridge-Hawker* (1963) 36 ALJR 354 at p356.

[36] *Inland Revenue Commissioner (NZ) v. International Importing Ltd* 3 ATR 173 at 181; 72 ATC 6033 at 6041.

Alternative view

162. An alternative view is that the question of whether goods are exported by one entity rather than another is to be decided on narrow legal grounds involving identification of the owner of the goods at the time the goods are exported.[37]

163. For example, in the case of goods sold FOB, property in the goods commonly passes when the goods are delivered by the supplier on board the ship. The result is that ownership of the goods passes to the recipient at a point in time before the goods leave the port. The goods are the property of, and under the control of, the recipient. Under the alternative view the recipient, therefore, is the exporter.

164. However, item 1 of the table in subsection 38-185(1) does not state that for the supplier to be the exporter, the supplier must be the owner of the goods at the time the goods are exported.

165. Based on the principles of statutory interpretation,[38] the meaning to be given to the phrase 'the supplier exports' is to be ascertained by reference to the context in which it appears and the purpose or object of the legislation in which it appears. The meaning we give to this phrase is consistent with the object of the legislation, that is, to treat exports of goods as GST-free where the goods are physically exported from Australia.[39]

166. The narrow legalistic view was not applied in the New Zealand case of *Inland Revenue Commissioner (NZ) v. International Importing Ltd*.[40] Richmond and Macarthur JJ said:

> 'In other contexts the question whether goods have been "exported" by one person rather than another, has been decided on narrow legal grounds. *Camelo v. Britten* (1820), 4 B. & Ald. 184; 106 ER 906, is an example. We agree with Mr Somers however that no such narrow approach could be made in the present case without defeating the plain and obvious purpose of s 129B.'

167. We consider that the meaning that we give to the phrase the *supplier exports* ensures that section 38-185 applies as intended.

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[37] See *Camelo v. Britten* (1820), 4B. & Ald. 184 ; 105 ER 906.

[38] See *Chaudhri v. FC of T* (2001) 2001 ATC 4214 at 4216; (2001) 47 ATR 126 at 128 per Hill, Drummond and Goldberg JJ.

[39] Refer Chapter 1 Executive Summary of the Explanatory Memorandum accompanying the *A New Tax System (Goods and Services Tax) Bill 1998.*

[40] See *Inland Revenue Commissioner (NZ) v. International Importing Ltd* ATR 180 at 181; ATC 6033 at 6041.

Supplier exports continued

168. In some cases a supplier may engage another party to deliver the goods, such as a freight forwarder, consolidator, air express courier or international postal agency. Although that other party delivers the goods on board the ship or to an aircraft operator, we nevertheless consider the supplier to be responsible for the delivery. The supplier is still considered to be the exporter.

169. To be identified as the exporter in these circumstances the supplier must have documentary evidence from the other party showing that the goods have been received in accordance with a contract to transport and deliver the goods to the ship or aircraft operator. This evidence could include a bill of lading, house bill, waybill or consignment note.

170. Documentary evidence is discussed in more detail at paragraphs 374 to 389.

Example 4 – Supplier delivers goods to a freight forwarder – CIF terms of sale.

171. *Bewdy Bats (Aust) is a manufacturer of quality cricket bats. An English cricket club contacts the Australian company to purchase a quantity of the bats. Bewdy Bats, having never made export sales, delivers the goods to a freight forwarder who has been engaged to arrange the export. The bats are sold on a CIF (cost insurance freight) basis and the forwarder delivers them on board a ship destined for the UK. Bewdy Bats is later issued with a house bill of lading and is the exporter of the goods*.

Example 5 –Supplier delivers goods to air express courier.

172. *Bewdy Bats (Aust) starts to receive individual orders from English cricketers for Australian-made bats. The Australian company sends the bats overseas either through the post or by an express courier service. The air express courier issues Bewdy Bats with a consignment note in respect of the goods. Australia Post provides documentation evidencing receipt of the goods for delivery to the overseas address. Although the Australian supplier has engaged third parties to deliver the goods on board a ship or aircraft to carry them overseas, as each third party is an international transport provider and has issued evidence of the carriage overseas, the supplier is considered the exporter*.

173. If the supplier delivers the goods to the recipient or to a party acting for the recipient such that the supplier is not responsible for delivering the goods on board the ship or aircraft, then we do not consider that the supplier exports the goods.

174. This would usually occur where the terms of the contract of sale are such that the supplier's obligations are fulfilled upon delivery of the goods at a place in Australia. (However note that subsection 38-185(3) may apply – see paragraphs 315 to 373).

Example 6 – Recipient exports – FAS terms of sale.

175. *Black Stump Coal Ltd arranges a sale of coal to a Singapore Trading Company where the price is negotiated on the basis of a contract to deliver the coal FAS (Free Alongside Ship) Gladstone. Black Stump Coal arranges and pays for the rail freight to the wharf in Gladstone where the coal is stored for a short period until the Singapore recipient arranges delivery onto a foreign bound ship. As the Australian supplier is not responsible for delivery onto a foreign bound ship, the supplier is not the exporter for the purposes of item 1. (Again, subsection 38-185(3) may apply - see paragraphs 315 to 373).*

176. Where the goods being supplied are a ship or an aircraft to be exported under its own power, items 3 and 4 may apply where the recipient is responsible for the export (refer the discussion at paragraphs 220 to 242). If, however, a supplier, or a party engaged by the supplier, physically transports the ship or aircraft out of Australia or transports the aircraft or ship under its own power we consider that the supplier is the exporter and item 1 applies.

177. It is important to note that the placing of goods on board a ship or aircraft does not constitute the export of those goods. Until the ship or aircraft leaves Australia with those goods on board, export has not occurred and, therefore, there is no exporter.

Export before or within 60 days

178. A supply of goods is GST-free if the supplier exports the goods before, or within a 60 day period (or such further period as the Commissioner allows).

179. The 60 day period commences on the earlier of:

(a) the day on which the supplier receives any of the consideration for the supply; and

(b) the day on which the supplier gives an invoice for the supply.

180. It is necessary, therefore, to establish when export occurs.

181. In *Wesley-Smith v. Balzary*[41], Forster J considered that export in the context of the Customs Act is capable of occurring at two different times, depending on whether it is to be determined in relation

[41] See *Wesley-Smith v. Balzary* (1976-77) 14 ALR 681.

to the imposition of duties (the commercial context) or in the prohibition of exports context.

182. In the commercial context, his Honour said:

> 'If duty is to be imposed and duty is to be collected, or if the goods are to be free of duty, this necessarily must occur at the point of leaving Australia and for this purpose the goods may be said to be exported at the moment of leaving Australia with the intention that they be landed elsewhere out of Australia'.[42]

183. In considering whether a prohibited export has occurred, his Honour said:

> 'Where the export of something prohibited is concerned, the meaning of export must, I think, involve the actual landing of the goods elsewhere out of Australia'.[43]

184. Under the GST Act, the fact that goods have been physically exported must be established so that GST is not payable on the supply of those goods. We consider that this is similar to the commercial context referred to in *Wesley-Smith v. Balzary*.

185. Accordingly, the point at which goods are exported for the purposes of item 1 is when the goods physically leave Australia with the intention of being landed at a place outside Australia.

186. Presently, goods can only leave Australia on board a ship or aircraft.[44] Thus the time at which goods are exported is the time at which the ship or aircraft departs its final Australian port or airport and clears the territorial limits of Australia (refer the definition of Australia discussed at paragraphs 131 to 136 above).

Example 7 – Ship departs final Australian port for a destination outside Australia.

187. *A company in Sydney agrees to sell coal to a customer in Japan. Under the terms of sale, the Sydney company is responsible for loading hatches of coal on a foreign bound vessel at the Port of Gladstone and the Port of Hay Point. The coal is loaded by the supplier (or a party engaged by the supplier) at Gladstone and the vessel sails up to the Port of Hay Point where the supplier loads the remaining hatches of coal before departing for Japan. Upon leaving the Port of Hay Point, which is the ship's final Australian port of call, the coal on board the ship is exported when the vessel departs*

[42] (1976-77) 14 ALR 681 at p 688.
[43] (1976-77) 14 ALR 681 at p 688.
[44] There maybe other methods of exporting goods in the future, for example, pipelines, cables, other spacecraft, but this Ruling does not address these potential modes of export.

Australian territorial waters. The ship later arrives in Japan where the coal is unloaded.

188. The timing requirement in item 1 is satisfied if the ship or aircraft, with the goods on board for landing at a place outside Australia, departs its final Australian port or airport and leaves Australia, before the end of the 60 day period.

189. A supplier will not always be aware of the actual time of export. The Commissioner therefore accepts that the timing requirement is met if, before the end of the 60 day period, the supplier delivers the goods on board the ship or to an aircraft operator or hands over possession of the goods to an international transport provider[45] for delivery on board the ship or to an aircraft operator.

190. However this is provided that the supplier has completed all of the other actions necessary on the part of the supplier to export the goods, for example, obtain necessary permits and Customs approvals.

191. The supplier needs documents evidencing receipt of the goods by the shipping line, aircraft operator or other international transport provider, and of the contract for carriage of the goods to a destination outside Australia (e.g., consignment note, certificate of shipment, bill of lading).

192. If the supplier is able to meet all the above requirements, but the ship or aircraft departs its final Australian port or airport and leaves Australia after the end of the 60-day period, the Commissioner grants an automatic extension equal to the additional time required for the export to occur.

Example 8 –Supplier delivers goods to international transport provider within the 60 day period.

193. *As in example 4, Bewdy Bats sells a quantity of cricket bats to an English buyer/recipient. The 60 day period commences when the recipient orders the goods, as payment in full is made at this time. The Australian supplier manufactures the bats and delivers them to their freight forwarder 50 days later. The freight forwarder provides Bewdy Bats with a delivery docket acknowledging receipt of the goods. The freight forwarder later arranges for the bats to be shipped LCL (less than container load), and issues a house bill to Bewdy Bats. As the Australian supplier has delivered the goods to an international transport provider before the end of 60 days, and all other export requirements are met, the supplier satisfies the 60 day timing requirement. If, in fact the house bill indicates that the ship departed*

[45] International transport provider includes a freight forwarder, consolidator, air express courier, postal agency, etc.

on the 63rd day, the Commissioner automatically extends the period by 3 days.

Example 9 – Supplier hands over goods to an international air express courier within 60 days.

194. *An Australian supplier exports goods through an international air express courier and is issued with a consignment note which has no reference to the date that the flight leaves. The supplier later receives confirmation of delivery of the goods to the overseas customer. Provided the goods were handed over to the courier before the end of the 60 day period, we accept that the timing requirement is satisfied, even though the Australian supplier is not aware of the actual time of export*.

195. Suppliers unable to deliver the goods on board the ship or to an aircraft operator, or hand over possession of the goods to an international transport provider[46] within the 60 day time period may apply to the Commissioner for an extension of time. The application should be in writing clearly setting out the length of the extension required and the circumstances why an extension to the 60 day period is being requested.

Example 10 – Supplier requests extension of time for export to occur.

196. *An Australian manufacturer of specialised machine components contracts to supply goods to one of their regular foreign customers. An invoice issues and the 60 day period commences. The components are produced, but the recipient advises that delivery is not required for three months due to a change in production schedules. The components are stored until the new delivery date. In this case, the supplier needs to make a written request for an extension of time for the supply of those goods to be GST-free under item 1 of subsection 38-185(1)*.

Example 11 - Supplier requests extension of time for export to occur.

197. *Overseas customers subscribe to an Australian publisher of journals that are circulated on a monthly basis. The subscription period is for twelve months and the journals are to be forwarded to the overseas subscribers monthly. The supply of journals is connected with Australia as the supply involves the goods being removed from Australia.[47] The subscription is paid in full at the beginning of the year and the 60 day period commences. The Australian publisher*

[46] Ibid.
[47] Subsection 9-25(2).

applies to the Commissioner in writing for an extension of the 60 day period because at least ten of the magazines will be exported after the 60 days have expired. The Commissioner extends the period until the last publication is issued.

198. If the goods are a ship or aircraft that the supplier exports under its own power, those goods are exported when the ship or aircraft departs its final Australian port or airport and leaves Australia for a destination outside Australia. To satisfy the timing requirement, that ship or aircraft must depart its final Australian port or airport and leave Australia before the end of the 60 days, or such further time as the Commissioner allows.

199. The supplier must have sufficient evidence to show that all of the requirements of this item are met. This is discussed further at paragraphs 374 to 389.

Adjustment events

200. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported, that is, the goods were not sent from Australia to a place outside Australia, this gives rise to an adjustment event. An adjustment event includes an event which has the effect of causing a supply to become a taxable supply.

Example 12 – Goods for export (FOB terms of sale) redirected to a place in Australia.

201. *As in example 1, Oz Wool Corporation contracts to sell a bulk shipment of wool to China Knits Co, with price and delivery agreed FOB Melbourne on the basis that the goods are exported. The ship's scheduled route is Hong Kong–Melbourne–Brisbane-Hong Kong. Upon delivery on board the ship, Oz Wool is advised by way of amended details on the bill of lading, that the wool is to be unloaded in Brisbane. The recipient directs Oz Wool to forward the bill of lading to their subsidiary company in Brisbane, as a change in production arrangements has resulted in the wool being redirected for delivery to China Knits' Australian operation. The wool has not been exported. The placing of the goods on board the ship by the Australian supplier does not amount to the export of the wool. The supply is a taxable supply. If Oz Wool has accounted for the supply as a GST-free supply, an adjustment event occurs. An event has occurred which has the effect of causing the supply to become a taxable supply.*

202. An adjustment event also arises if the goods are not exported before the end of the 60 day period (or such further period as allowed by the Commissioner).

203. If the adjustment event occurs in the same tax period in which the GST on the supply is attributable an adjustment does not arise. However, if the GST on the supply would have been attributable to an earlier tax period, the supplier has an increasing adjustment equal to the amount of GST now payable on that supply.

204. Adjustments for adjustment events are attributed to the tax period in which the supplier becomes aware of the adjustment.[48]

Item 2 – Export of goods (instalment contract)

205. If the consideration for an export sale is provided in instalments, a supplier may not be able to meet the requirements that the goods are exported within 60 days of receiving any consideration. Item 2 addresses this issue.

206. Item 2 of the table in subsection 38-185(1) provides that:

Export of goods – supplies paid for by instalments	A supply of goods for which the consideration is provided in instalments under a contract that requires the goods to be exported, but only if the supplier exports them from Australia before, or within 60 days (or such further period as the Commissioner allows) after: (a) the day on which the supplier receives any of the final instalment of the consideration for the supply; or (b) if, on an earlier day, the supplier gives an invoice for that final instalment – the day on which the supplier gives the invoice.

207. A supply of goods that are exported is GST-free where the elements of item 2 of the table in subsection 38-185(1) are satisfied. The elements are:

(a) there is a supply of goods;

(b) the consideration is provided in instalments;

(c) the contract requires the goods to be exported;

(d) the supplier exports them; and

(e) the export occurs before or within a 60 day period (or such further period as the Commissioner allows).

[48] Subsection 29-20(1).

Supply of goods

208. Supply of goods takes the same meaning as discussed in item 1 at paragraphs 123 and 124.

Consideration provided in instalments

209. This element is satisfied if the contract provides for the consideration to be paid in two or more instalments. This may occur where goods are being constructed and payment is made periodically or on a progressive basis.

The contract requires the goods to be exported

210. This means that it must be an express or implied term of the contract that the goods are to be exported.

211. Information contained in the contract which supports the requirement to export the goods may include:

(a) the overseas destination to which the goods are to be delivered;

(b) the identity and location of the purchaser;

(c) obligations to carry out export formalities;

(d) obligations in respect of international transport costs;

(e) obligations in respect of import costs and formalities in a foreign country.

The supplier exports them

212. The supplier exports them takes the same meaning as discussed in item 1 at paragraphs 137 to 177.

Export before or within 60 day period

213. A supply of goods is GST-free if the supplier exports the goods before, or within a 60 day period (or such further period as the Commissioner allows).

214. The 60 day period commences on the earlier of:

(a) the day on which the supplier receives any of the final instalment of the consideration for the supply; or

(b) the day on which the supplier gives the invoice for that final instalment.

215. The timing requirement is satisfied if the goods are exported as explained in paragraphs 178 to 199 before the end of the 60 day period.

216. The Commissioner grants an automatic extension of time equal to the additional time required for the export to occur where the circumstances described at paragraphs 189 to 192 exist.

217. If a supplier is otherwise unable to meet the 60 day time period, an application for an extension of time should be made with the Commissioner.

Example 13 – Consideration is provided in instalments.

218. *Dinkum Designs Pty Ltd is an Australian manufacturer of outdoor clothes hoists. The company enters an agreement to produce 5000 hoists for a United States recipient intending to wholesale the goods in the US. The contract provides for the consideration to be provided in 5 equal instalments. All 5000 will be sent in one consignment, and the contract sets out that the Australian supplier is responsible for the cost of insurance and freight for the shipping of the clothes hoists to California. The contract provides that the agreed price does not include the costs of importation into the US, such that the recipient is responsible for United States Customs procedures and entry costs. This supply falls for consideration under item 2, and the 60 day period commences when the final instalment is paid.*

Adjustment events

219. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit this gives rise to an adjustment event (refer paragraphs 200 to 204 above).

Item 3 – Export of aircraft or ships

220. Item 3 of the table in subsection 38-185(1) provides that:

Export of aircraft or ships	A supply of an aircraft or ship, but only if the recipient of the aircraft or ship exports it from Australia under its own power within 60 days (or such further period as the Commissioner allows) after taking physical possession of it.

221. A supply of an aircraft or ship is GST-free where the elements of item 3 of the table in subsection 38-185(1) are satisfied. The elements are:

(a) a supply of an aircraft or ship;

(b) the recipient of the aircraft or ship exports it from Australia under its own power; and

(c) the export occurs within a specified period.

A supply of an aircraft or ship

222. The term 'aircraft' takes its ordinary meaning. The term 'ship' is defined in section 195-1 as 'any vessel used in navigation, other than air navigation'.

Recipient exports

223. We consider that the recipient exports the aircraft or ship under its own power if the recipient, or a party engaged by the recipient, physically navigates the aircraft or ship to a destination outside Australia.

224. If the supplier exports the ship or aircraft under its own power item 3 does not apply. However, the supply may be GST-free under item 1.

225. If the recipient exports the ship or aircraft not under its' own power, item 3 does not apply. However, the supply may be GST-free under item 1 if the requirements of subsection 38-185(3) are satisfied.

Export within 60 days

226. A supply of an aircraft or ship is GST-free under item 3 if the recipient exports the aircraft or ship from Australia within a 60 day period (or such further period as the Commissioner allows).

227. A ship or aircraft is exported when the ship or aircraft departs its final Australian port or airport and leaves Australian for a destination outside Australia. Thus to satisfy the timing requirement the aircraft or ship must leave Australia before the end of the specified period.

228. The 60 day period commences when the recipient (or another person at the recipient's request) takes physical possession of the aircraft or ship. We consider that this refers to taking possession of goods in the ordinary course of completing the contractual obligations of the supply.

Example 14 – Recipient hires yacht and subsequently purchases the yacht.

229. *Sails & Sales Marine is a business operating in Cairns, specialising in renting and selling yachts to tourists. A small craft is*

hired[49] *to Antonio, an experienced Spanish sailor. After the end of a 28 day hire period, instead of returning the yacht, Antonio offers to buy the boat to sail back to Spain. Sails & Sales sells the yacht, and Antonio exports the yacht from Darwin. The 60 day period commences when Antonio takes physical possession of the yacht as part of the sale of the yacht. The taking of possession when the yacht was initially hired is not taking of possession within the meaning of item 3. Sails and Sales Marine is sent a copy of the Customs export documentation and the yacht's final certificate of clearance as evidence of export.*

230. Where the ship or aircraft cannot be exported within the 60 day time period, application may be made to the Commissioner seeking an extension of time for the export to occur. The application should be in writing clearly setting out details of the supplier, the recipient and the circumstances why an extension to the 60 days is required.

231. A supplier is required to have evidence that the ship or aircraft was exported. We accept as sufficient evidence a copy of the certificate of clearance issued by Customs indicating a foreign port as the destination of the particular ship or aircraft. The requirement to keep documentary evidence is discussed in more detail at paragraphs 374 to 380 and 392 to 394.

Adjustment events

232. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit this gives rise to an adjustment event (refer paragraphs 200 to 204 above).

Item 4 – Export of aircraft or ships (instalment contracts)

233. If the consideration for an export sale is provided in instalments, a supplier may not be able to meet the requirements under item 3. Item 4 addresses this issue.

[49] The supply of that craft by way of hire is a taxable supply subject to GST.

234. Item 4 of the table in subsection 38-185(1) provides that:

Export of aircraft or ships – paid for by instalments	A supply of an aircraft or ship for which the consideration is provided in instalments under a contract that requires the aircraft or ship to be exported, but only if the recipient exports it from Australia before, or within 60 days (or such further period as the Commissioner allows) after, the earliest day on which one or more of the following occurs: (a) the supplier receives any of the final instalment of the consideration for the supply; (b) the supplier gives an invoice for that final instalment; (c) the supplier delivers the aircraft or ship to the recipient or (at the recipient's request) to another person.

235. A supply of an aircraft or ship is GST-free where the elements of item 4 of the table in subsection 38-185(1) are satisfied. The elements are:

(a) a supply of an aircraft or ship;

(b) consideration provided in instalments;

(c) the contract requires the aircraft or ship to be exported;

(d) the recipient of the aircraft or ship exports it from Australia; and

(e) the export occurs within a specified period.

236. Elements (a) and (d) take the same meaning as in item 3 discussed at paragraphs 222 to 225 above. Elements (b) and (c) take the same meaning as in item 2 discussed at paragraphs 209 to 211 above.

Export before or within 60 days

237. A supply of an aircraft or ship is GST-free if the recipient exports the aircraft or ship before, or within a 60 day period (or such further period as the Commissioner allows).

238. The 60 day period commences on the earlier of the day on which the supplier:

(a) receives any of the final instalment of the consideration for the supply;

(b) gives the invoice for that final instalment; or

(c) delivers the aircraft or ship to the recipient (or at the recipient's request) to another person.

239. The timing requirement is satisfied if the aircraft or ship is exported before the end of the 60 day period. Exported takes the same meaning as explained in paragraph 227 above.

240. The 60 day period may be extended in the same manner as discussed as paragraph 230.

241. The documentary evidence requirements are the same as discussed at paragraph 231. The requirement to keep documentary evidence is discussed in more detail at paragraphs 377 to 383 and 395 and 396.

Adjustment events

242. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit this gives rise to an adjustment event (refer paragraphs 200 to 204 above).

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

243. Item 5 of the table in subsection 38-185(1) provides that:

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 an 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.

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

(a) there is a supply of aircraft's or ship's stores or spare parts;

(b) that are for use, consumption or sale on an aircraft or ship; and

(c) that aircraft or ship is on, or is embarking 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

245. Aircraft's stores means stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft.[50] Ship's stores means stores for the use of the passengers or crew of a ship, or for the service of the ship.[51]

246. Stores includes all forms of 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.[52] We consider that stores also includes non-consumable goods such as safety equipment. 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.

247. Goods taken on board by the passengers and/or crew as personal belongings, or for private use, such as jewellery, cameras, personal toiletries, are not considered to be stores for the purposes of item 5.[53]

248. Spare parts are parts or components that are intended to be affixed to a ship or aircraft to replace defective parts or components whether or not supplied for immediate fitting.

For use, sale or consumption on an aircraft or ship

249. For a supply of aircraft's or ship's stores or spare parts to come within item 5, the supplies must be for use, sale or consumption on a ship or aircraft. The supplier must be aware of, and have evidence of, the intended specific use of the goods as aircraft's or ship's stores or

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[50] Section 195-1 and section 130C of the Customs Act 1901.
[51] Section 195-1 and section 130C of the Customs Act 1901.
[52] Kyoto Convention 2000, Annex J.
[53] 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.

spare parts on board a ship or aircraft. Supplies made earlier in the distribution chain will not be GST-free.[54]

250. A supplier may be able to determine whether a supply of aircraft or ship's stores or spare parts is for use, consumption or sale on aircraft or a ship by the very nature of the goods themselves and the quantity supplied. Further indicators may be the delivery of the goods directly to the aircraft or ship or by representations made by the recipient (the ship or aircraft operator).

251. The supplier needs documentary evidence to show that the goods supplied:

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

(b) that the aircraft's or ship's stores or spare parts are for use, consumption or sale on board an aircraft or ship.

Aircraft or ship has a destination outside Australia (whether or not part of the flight or voyage involves a journey between places in Australia)

252. For aircraft's or ship's stores or spare parts to be covered by item 5, those stores or spare parts must be for the use, consumption or sale on board an aircraft or ship that is on, or is embarking on, an international flight or voyage. This is highlighted by the topic description, which refers to the 'export of goods that are to be consumed on international flights or voyages'.

253. The description of the GST-free supply refers to a 'flight or voyage that has a destination outside Australia'. This is so, whether or not part of the flight or voyage involves a journey between places in Australia.

254. It follows that for the purposes of item 5 an international flight or voyage is a flight or voyage that has a destination outside Australia, whether or not part of the flight or voyage involves a journey between places in Australia.

255. Because the expression 'international voyage' in the Customs Act is used in a similar way to item 5 we consider that guidance on the meaning of 'international voyage' can be obtained from cases involving the Customs Act.

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

> 'a voyage, whether direct or indirect, between a place inside Australia and a place outside Australia.'[55]

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[54] Consistent with UK approach in *Staatssecretaris van Financin v. Velker International Oil Co NV, Rotterdam* (Case 185/89) [1991] BVC 108.

[55] Section 130C.

257. The High Court of Australia considered the Customs definition of 'international voyage' in *BP Australia Limited v. Bissaker* (1987) 163 CLR 106 where 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. It provides:

> ' 'ship' does not include:
>
> (a) a ship that is not currently engaged in making international voyages; or
>
> (b) a ship that is currently engaged in making international voyages but is about to make a voyage other than an international voyage.'

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

259. 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. The distinction may be temporal, geographic or even purposive.

260. 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.

261. 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:[56]

> '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.'

[56] *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…'

262. It is our view that the requirement under item 5, that a ship is on a voyage that has a destination outside Australia, is satisfied when the ship is undertaking an international voyage within the meaning of the Customs Act. That is the case even if *that* international voyage involves a journey between places in Australia. It is not satisfied when the ship is undertaking a secondary voyage that is not an international voyage. Similarly, the requirement is not satisfied if the ship merely sails through international waters without 'laying' anchor at a place outside Australia.

Example 15 – International voyage that involves a journey between places in Australia.

263. *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*.

264. *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*.

265. *On the same route, the ship discharges all of its overseas cargo in Brisbane. A domestic load of cargo is carried from Brisbane to Sydney. The ship still 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 16 – Separate voyage that is not an international voyage.

266. *A ship from Singapore is bound for Sydney to load cargo for export. The ship does not carry cargo for discharge in 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 can be disconnected from the ultimate international voyage. This part of the voyage is a separate voyage which is not an international voyage*.

267. *The ship arrives in Brisbane and unloads some international cargo and loads more cargo for export to Singapore. It travels on to*

Newcastle to discharge more international cargo. Whilst in Newcastle it secures a contract for urgent delivery of domestic cargo to Wollongong. The sole purpose of travelling to Wollongong is to discharge this domestic cargo. The ship sails from Wollongong to Sydney, discharges the remaining international cargo for import and loads goods for export to Singapore. The ship then departs Australia. The journey from Newcastle to Wollongong is a disconnection from the international voyage as the diversion is solely for a non-international purpose. This leg of the route is not an international voyage.

268. 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. It provides:

> ' 'aircraft' does not include –
>
> (a) an aircraft that is not currently engaged in making international flights; or
>
> (b) an aircraft that is currently engaged in making international flights but is about to make a flight other than an international flight.'

269. International flight is defined in the Customs Act. 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'.

270. It is our view that the requirement under item 5, that an aircraft is on a flight that has a destination outside Australia, is satisfied when the aircraft is undertaking an international flight within the meaning of the Customs Act. That is the case even if *that* international flight involves a journey between places in Australia. It 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.

271. The status of the particular flight or voyage, for the purposes of item 5, must be determined at the point in time at which 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 under item 5 is only GST-free if those goods are for use etc on a ship or aircraft that is on, or embarking on, an international flight or voyage.

272. For a private yacht or pleasure craft travelling in Australia on a cruising permit, Customs do 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. We consider the same applies for the purposes of item 5.

Example 17 – Cruising permit for 12 months – international voyage on departing final Australian port with a final certificate of clearance from Customs.

273. *Angelo, a European travelling yachtsman arrives in Sydney from New Zealand after travelling throughout the Pacific Islands. Customs issue a cruising permit, authorising the yacht to visit various listed 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 back to Europe via Indonesia. Angelo hugs the east coast visiting various islands on the 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).*

274. If a supplier makes GST-free supplies of aircraft's or ship's stores or spare parts to ships or aircraft, the supplier needs to retain sufficient documentary evidence to show that the flight or voyage was to a destination outside Australia.

275. The documentation must indicate the imminent departure of the ship or aircraft. In the case of commercial aircraft or ships, an example may be flight schedules or shipping timetables. In the case of a visiting foreign yacht an example of proof of the imminent departure would be a final clearance certificate issued by Customs. A current cruising permit alone would not be proof of imminent departure.

Private vessels

276. A supplier that has a copy of the Customs final certificate of clearance has sufficient evidence to show that the small craft was on an international voyage.

277. A supplier who is unable to obtain a copy of the final certificate of clearance should ensure that other documentary evidence is obtained, which is sufficient for an independent third party to conclude that the small craft was departing on an international voyage. The types of documentary evidence that may be obtained are discussed at paragraph 400.

278. Alternatively purchasers departing on small craft who are unable to provide sufficient documentary evidence to their supplier to support a GST-free supply of ship's stores may be eligible for a refund of GST under the Tourist Refund Scheme for goods purchased at GST-inclusive price.[57] Purchasers need to comply with the conditions of the Scheme, which includes having the goods available for sighting by a Customs small craft officer on departure.

279. The general requirement to retain documentary evidence is referred to in more detail at paragraphs 397 to 402.

Item 6 – Export of goods used to repair etc. imported goods

280. Item 6 of the table in subsection 38-185(1) provides that:

Export of goods used to repair etc imported goods	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: (a) the goods are attached to, or become part of, the other goods; or (b) the goods become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the other goods.

281. A supply of goods in the course of repairing, renovating, modifying or treating other goods is GST-free where the elements of item 6 of the table in subsection 38-185(1) are satisfied. The elements are:

(a) there is a supply of goods;

[57] 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.

(b) the supply is in the course of repairing, renovating, modifying or treating other goods;

(c) those other goods are from outside Australia and have a destination outside Australia; and

(d) the goods supplied are attached to or become part of the other goods or become unusable or worthless as a direct result of being used to repair, renovate, modify, or treat the other goods.

Supply of goods

282. A supply of goods is a supply of any form of tangible personal property.[58] Supplies of things, other than goods, such as supplies of services for consumption outside Australia may be GST-free under section 38-190.

283. In many instances, a person may supply goods and services, for example parts and labour, in the process of repairing, renovating, modifying or treating other goods. A supply of goods is GST-free under this item if all the requirements of the item are satisfied. A supply of services is GST-free under item 5 of the table in subsection 38-190(1)[59] if all the requirements of that item are satisfied. It will not generally be necessary to determine whether a supply is a supply of goods or services or a combination of both if in any event the requirements of both items are satisfied.

Example 18 – Supply of goods in the course of repairing imported goods.

284. *An overseas customer sends an Australian manufactured 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 intricate component and sends the goods back to the customer with an invoice itemising the charge for parts and labour in repairing the clock. The supply is GST-free either under item 6 of subsection 38-185(1) or item 5 of subsection 38-190(1). This is the case, even if the supply of parts is considered ancillary to the supply of services, or vice versa.*

285. However, if the elements of both items are not satisfied, for example, there is no repair, renovation, modification or treatment, it is necessary to determine whether the supply is one of goods or services

[58] Section 195-1.

[59] Item 5 in subsection 38-190(1) provides that a supply that is constituted by the repair, renovation, modification or treatment of goods from outside Australia whose destination is outside Australia is GST-free.

because the supply may be GST-free under another item. For example, a supply of services may be GST-free under another item in the table in subsection 38-190(1).

286. If the supply of goods is made by the person who is supplying the service of repairing, renovating, modifying or treating the other goods, the supply of goods is 'in the course of' repairing, renovating modifying or treating the other goods.

287. Where a supply of goods is made to the owner of the temporarily imported goods who is carrying out the repair process, we consider that the supply of goods is also 'in the course of' repairing, renovating, modifying or treating other goods'. This interpretation has also been adopted in New Zealand with respect to the repair of visiting foreign yachts.[60]

Example 19 – Self repairs – goods supplied in the course of repairing a yacht.

288. *Angelo, the European travelling yachtsman mentioned at paragraph 273 has recently arrived in Australia from New Zealand. Before continuing his journey to his next overseas destination, he undertakes some repairs to his yacht while docked at the port of Brisbane. Charlie's Chandlery supplies Angelo with a replacement mast and the parts needed to repair damage to the yacht's motor. Angelo installs the mast and uses the parts to repair the motor on his yacht. The supply by Charlie's Chandlery is in the course of the repair of the yacht. As the yacht is from outside Australia and the yacht's destination is outside Australia the supply by Charlie's Chandlery to Angelo is GST-free*.

289. A supply of goods earlier in the distribution chain is not in the course of the repair, renovation, modification or treatment. For example, the supply of electrical components by an electronics retail store to a technician for re-supply in repairing temporary 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 temporary imported goods.

Example 20 – Supplies from a wholesaler to a retailer to a customer.

290. *As in example 19, Charlie's Chandlery is supplying goods to Angelo, the visiting yachtsman. However, Angelo requires a particular seal for his bilge pump that Charlie does not keep in stock. Charlie therefore buys the seal from 'Have it all Wholesale' Co. to*

[60] See NZ Tax Information Bulletin: Volume Ten, No. 11 (November 1998) "Temporary imports such as yachts – zero-rating for goods and services tax."

resell to Angelo. The supply from Have it All Wholesale to Charlie is not in the course of the repair and is not a GST-free supply.

Repairing, renovating, modifying or treating other goods from outside Australia whose destination is outside Australia

291. The terms 'repairing', 'renovating', 'modifying' and 'treating' are not defined in the GST Act and therefore take their ordinary meaning.

292. The ordinary meaning of 'repair' is 'to restore to good or sound condition after decay or damage; mend'.[61] Examples of repairing include replacing defective or worn parts or re-attaching parts which have become detached.

293. The ordinary meaning of 'renovate' is 'to make new or as if new again; restore to good condition; repair'.[62] The income tax law distinguishes between repairs and renovations on the basis that a renovation changes the character or enhances efficiency of function, while a repair merely restores the character or efficiency of function.

294. The ordinary meaning of 'modify' is 'to change somewhat the form or qualities of; alter somewhat'.[63]

295. 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'.[64] Examples of treatment include rust proofing of metals, water proofing materials, or use of cleaning agents.

296. The word treatment was discussed in *Federal Commissioner of Taxation v. Hamersley Iron Pty Ltd* 81 ATC 4582; 12 ATR 429 in the context of Sales Tax provisions. Lush, J, in deciding whether goods had been subjected to 'treatment' stated at ATC 4591; ATR 440

> 'The goods, so identified, are shown by the evidence to have been subjected to a desired change… If a change in form, nature or condition is sought, then the goods have been changed in such a way that, if they have not been made marketable, they have at least been made marketable to the better advantage of both seller and buyer. In a word, the change in the goods justifies the application of the word treatment to the mode of producing change…'

297. This case points to a wide meaning for the term 'treatment' to include any process whereby the goods are changed. This would

[61] Macquarie Dictionary 3rd edition.
[62] Macquarie Dictionary 3rd edition.
[63] Macquarie Dictionary 3rd edition.
[64] Macquarie Dictionary 3rd edition.

suggest that a process could still be considered treatment even when the process amounts to the manufacture of goods.

298. However the use of the word 'whose' in item 6 where the legislation refers to 'goods from outside Australia *whose* destination is outside Australia' points to a narrower meaning of treatment.

299. 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.'[65]

300. Manufacture would commonly result in a change of identity of the goods concerned. The end product has a commercial identity of its own.

301. We consider that the use of the word 'whose' in item 6 means that the exported goods should be essentially the same as the imported goods. The imported goods must still be recognisable when exported.

302. For item 6 to apply, the 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 good but the substance of the imported good remains unchanged. That is, the essential or fundamental character of the good remains unchanged. The imported good retains its own commercial identity.

Example 21 – imported goods different to goods that are exported.

303. *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 another active ingredient and various additives and bonding agents to produce a headache medication in a tablet form. The tablets are sent in bulk to the foreign company who is then charged for the processing service. The powder has been subsumed into new or different goods (the tablets) that have been produced as a result of the process of 'treatment'. The goods from outside Australia have lost their identity. The goods sent from Australia are different goods to those goods that were imported into Australia. Item 6 does not apply to the supply of goods in the course of treating the powder to form headache tablets. (Nor would item 5 of the table in subsection 38-190(1) apply to treat the services provided by the Australian manufacturer to the foreign chemical company as GST-free). However, item 2 in subsection 38-190(1) may apply*.

[65] Macquarie Dictionary 3rd edition.

Alternative view

304. The alternative view is that, even if the goods from outside Australia are subsumed into new or different goods that have been produced as a result of a process of 'treatment', item 6 applies. It is of no consequence that the imported goods have changed their essential or fundamental character. This view gives effect to the wide meaning of 'treatment' in *Federal Commissioner of Taxation v. Hamersley Iron Pty Ltd.*[66] Under this alternative item 6 of subsection 38-185(1) or item 5 of subsection 38-190(1) applies in *example 21*.

The other goods are from outside Australia and have a destination outside Australia

305. For item 6 to apply, the goods that are being repaired, renovated, modified or treated must be from outside Australia and have a destination outside Australia.

306. At the time the goods are imported, it must be intended that the goods are to be exported. The Commissioner accepts that if those goods are exported as soon as practicable or reasonable after the repair, renovation, modification or treatment, the goods have a destination outside Australia.

307. The duration of the stay of the goods in Australia while the repair, renovation, modification or treatment is undertaken will be temporary or transitory. That is, there is a temporal link or nexus between the importation and the repair, renovation, modification or treatment and the export.

Example 22 – Temporal nexus exists.

308. *An aircraft of an international airline arrives in Australia. On arrival it is discovered that the aircraft has a mechanical problem. The problem is repaired and after a short delay the aircraft continues on its international route. The aircraft's stay in Australia is transitory. There is a nexus between the arrival, the repair and the departure*.

Example 23 – There is no temporal nexus.

309. *An Australian business person is about to embark on an overseas business trip. Prior to departure the person repairs and upgrades a laptop computer that they have owned for a period of time. The computer originally came from overseas. When the computer was*

[66] 81 ATC 4582; 12 ATR 429.

imported there was no intention that it would be exported. There is no temporal link between the import, the repair and the export.

310. A supplier needs evidence to show that the goods were from outside Australia, have been repaired, renovated, modified or treated and have a destination outside Australia. Documents such as Customs import and export entries, domestic invoices and international transport 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 and aircraft and containers covered by the Customs Convention on Containers 1972, other types of evidence will be applicable.

311. The requirement to retain documentary evidence is referred to in more detail at paragraphs 403 to 407.

Example 24 – Evidence that the requirements of item 5 are met.

312. *An international cargo 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. The evidence may be obtained from the shipping company and may include a declaration to that effect*.

The goods supplied are attached or consumed

313. This requirement is met if the goods supplied become attached to or become part of the other goods or if the goods become unusable or worthless as a result of the repair, renovation, modification or treatment.

314. 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.

Subsection 38-185(3) - supplier treated as exporter for the purposes of items 1 and 2

315. If a party other than the supplier exports the goods the requirement of items 1 and 2 that the supplier exports is not satisfied. If the recipient exports the goods items 1 and 2 may still be satisfied if subsection 38-185(3) applies.

316. Subsection 38-185(3) operates to treat in certain circumstances the supplier as having exported the goods when in fact the recipient exports the goods. Where the subsection applies the supply of goods may be GST-free under items 1 or 2.

317. Specifically, subsection 38-185(3) provides that:

> Without limiting items 1 and 2 in the table in subsection (1), a supplier of goods is treated, for the purposes of those items, as having exported the goods from Australia if:
>
> (a) before the goods are exported, the supplier supplies them to an entity that is not registered or required to be registered; and
>
> (b) that entity exports the goods from Australia; and
>
> (c) the goods have been entered for export within the meaning of section 113 of the Customs Act 1901; and
>
> (d) since their supply to that entity, the goods have not been altered or used in anyway, except to the extent (if any) necessary to prepare them for export; and
>
> (e) the supplier has sufficient documentary evidence to show that the goods were exported.
>
> However, if the goods are reimported into Australia, the supply is *not* GST-free unless the reimportation is a taxable importation.[67]

318. Under subsection 38-185(3), a supplier is treated, for the purposes of items 1 and 2, as having exported the goods from Australia where elements (a) to (e) of this subsection are met. Paragraphs 327 to 368 provide guidance as to how these elements may be satisfied.

319. The opening words of subsection 38-185(3) make it clear that the subsection does not limit the operation of items 1 and 2, but rather the subsection expands them. In addition to satisfying all the elements in subsection 38-185(3), a supplier must also satisfy the other requirements of item 1 or 2, as the case may be.

320. Subsection 38-185(3) also provides that if the goods are reimported the supply is not GST-free unless the reimportation is a taxable importation.

321. Where the 'supplier exports' the goods, there is no need to examine subsection 38-185(3).

[67] Taxable importation is defined in section 13-5.

Example 25 – Supplier exports - subsection 38-185(3) is not relevant.

322. *As in example 5, Bewdy Bats receives an order from an English cricketer for several bats. The English cricketer is holidaying in Australia at the time the order is placed and chooses the specific bats at one of Bewdy Bats' retail outlets. The bats are paid for immediately, but rather than taking them from the shop and carrying them on the aircraft, the tourist pays an additional fee for Bewdy Bats to arrange delivery to his home. Bewdy Bats has the goods couriered to the customer's address in the UK. In this case the supplier exports and subsection 38-185(3) is not relied upon*.

323. Where the 'supplier exports' the goods, there is no need to examine subsection 38-185(3), even if the supplier supplies the goods before they are exported.

Example 26 – Supplier exports where goods are supplied before export under a contract of sale the terms of which are FOB - subsection 38-185(3) not relevant.

324. *As in example 1, Oz Wool sells a bulk shipment of wool to China Knits, with delivery to be made FOB Melbourne. Title to the wool and risk passes to the recipient upon delivery over the ship's rail, such that it is clear that Oz Wool has supplied the wool to China Knits before the goods are exported. The wool is exported when the ship departs its final Australian port and leaves Australia. Oz Wool is the exporter of the wool under item 1, as Oz Wool is responsible for delivering the goods on board a ship which has been engaged to carry them to Hong Kong. Oz Wool does not need to look to subsection 38-185(3)*.

325. However, where the supplier is not the exporter the supplier must satisfy the requirements of subsection 38-185(3).

Example 27 - Recipient exports – subsection 38-185(3) is relied upon.

326. *As in example 3, Black Stump Coal sells 10000 tonnes of coal under an Ex-works contract to a foreign buyer. The buyer takes delivery of the commodities at the supplier's premises in central Queensland. The buyer then transports the coal to the wharf and loads it on board a foreign bound ship. As the buyer is the exporter, Black Stump Coal needs to satisfy the elements of subsection 38-185(3) if the supply is to be GST-free*.

Paragraph 38-185(3)(a) – supply to unregistered entity

327. Paragraph (a) is satisfied where a supplier supplies the goods to an entity before the goods are exported, and that entity is not registered or required to be registered

328. For the purposes of paragraph (a), a supplier supplies goods to an entity where the goods are delivered according to the contract of sale with that entity. This would usually correspond with the time at which the supplier's obligations under the contract are fulfilled, and the goods become the risk of the buyer/recipient.

329. For example under an ex-works contract of sale, the seller must place the goods at the disposal of the buyer at the named place of delivery (commonly the seller's premises), not loaded on any collecting vehicle, on the date or within the period agreed, or if no time is agreed, at the usual time for delivery of such goods. The seller generally must bear all risks of loss of or damage to the goods until such time as they have been delivered, after which the supplier's obligations cease.

330. Where a supplier hands over physical possession of goods to an intermediate entity who is not buying the goods (such as a freight forwarder, consolidator, transport provider), the supplier has not made a supply of the goods to that entity.

331. For example, a contract of sale between the supplier and the recipient may require delivery of the goods to be made to a third party in Australia (such as a carrier engaged by the buyer/recipient). When a supplier makes such delivery we consider that the supplier has supplied the goods to the recipient, rather than to the third party. The goods are only being delivered to the third party and not supplied.

Example 28 – Delivery to intermediary and supply to recipient.

332. *Pierre, a French wine connoisseur buys the finest wines from all over the world. To reduce his freight costs on the many Australian wines he buys, Pierre engages an Australian freight consolidator. Pierre orders 30 cases of wine from one of his Australian suppliers, Koala Valley Winery, with delivery to be made to the consolidator in Adelaide. Once delivery is made to the consolidator, Koala Valley has no further obligations and is entitled to payment for the wine. The consolidator holds the 30 cases on behalf of Pierre, until a full container load is received, upon which the consolidator, in accordance with the recipient's instructions, sends the wine to Pierre in France. Koala Valley, by delivering the goods to the consolidator, has supplied them to Pierre*.

333. Under paragraph (a), it is also a requirement that the recipient of the supply is not registered, and that the recipient is not required to be registered for GST.

334. A supplier is able to ensure that a supplier is not registered by checking the Australian Business Register.[68]

335. An entity is required to be registered if the entity is carrying on an enterprise and makes supplies connected with Australia to a value of $50,000 or more per year.[69]

336. The supplier must be satisfied, on reasonable grounds that the entity it supplies to is not required to be registered. Where a supplier is not in a position to be aware of these circumstances, enquires should be made of the recipient.

337. We accept that the supplier has reasonable grounds to be satisfied, if the entity has provided a signed written statement, declaring that the entity is not required to be registered. This is provided the supplier has no other reason to believe that the statement is not accurate.

338. A supplier can not be treated as having exported the goods under subsection 38-185(3) if the goods are supplied to a registered entity. This is regardless of the purpose for which that entity is registered. In these circumstances, even if the recipient exports the goods the supply is a taxable supply. A registered entity that exports good may be entitled to an input tax credit for the acquisition.

Example 29 – Supply of goods to an entity that is not registered or required to be registered.

339. *As in example 27, Black Stump Coal sells 10,000 tonnes of coal under an Ex-works contract to a foreign buyer/recipient. The recipient exports the goods. Subsection 38-185(3) may apply. Black Stump Coal searches the Australian Business Register and finds that the recipient is not registered. However, as Black Stump is not aware of whether the buyer/recipient is required to be registered, the Australian supplier obtains a signed declaration from the recipient stating that the recipient does not make supplies connected with Australia and is not required to be registered for GST. We accept that the supplier has reasonable grounds to believe that the requirements of paragraph (a) are satisfied.*

[68] A person may do this at www.bep.gov.au or www.abr.gov.au.
[69] See sections 23-5 and 23-15. The annual turnover threshold for a non-profit body is $100000.

Paragraph 38-185(3)(b) – that entity exports the goods

340. Paragraph (b) is satisfied if *the recipient* of the supply *exports* the goods from Australia.

341. Consistent with the meaning we give to the phrase the 'supplier exports' (refer paragraphs 137 to 177), the requirement that the recipient exports the goods is satisfied where the recipient is responsible for delivering the goods on board a ship or to an aircraft operator that has been engaged to carry those goods to an overseas destination. The recipient may carry this out by engaging an international transport operator, such as a freight forwarder, consolidator, air express courier or postal agency.

Example 30 – Recipient exports.

342. *As in example 28, Pierre engages an Australian freight consolidator to arrange for the export of wine on his behalf. The wine is shipped to France. Pierre, the recipient, exports the wine*.

Paragraph 38-185(3)(c) – Entered for export

343. Under paragraph (c), the goods supplied must be entered for export within the meaning of section 113 of the Customs Act.

344. The Customs Act requires most goods that are to be exported to be reported to Customs on an entry for export. An entry for export is a document lodged manually or electronically with Customs that provides details of the goods to be exported and their destination.

345. Under the Customs Act an export entry is not required for certain goods, such as goods exported as personal effects in accompanied baggage, or low value exports. Paragraph (c) is not relevant for goods of this kind.

346. It is not necessary that the supplier is the entity that enters the goods for export, however, the supplier needs to be able to substantiate that the entry was made.

347. If the supplier has a record of the Export Clearance Number (ECN) in respect of the goods, the supplier is able to show that the goods were entered for export. If the goods are of a nature that the Customs Act requires an export entry to be lodged, and the supplier has sufficient evidence of the actual export of those goods (such as from the transport operator), we accept that an export entry was lodged.

Paragraph 38-185(3)(d) – the goods have not been used, altered etc

348. Paragraph (d) is satisfied where the goods, since their supply have not been altered or used in any way, except to the extent necessary to prepare them for export.

349. Pre-export preparation such as packaging, wrapping, cleaning, disinfecting, dismantling, or testing is considered necessary to prepare the goods for export, where it is not reasonable given the nature of the goods, to export those particular goods without carrying out the relevant activity.

Example 31 – Preparation of goods for export

350. *A New Zealand racehorse trainer comes to Australia to buy a thoroughbred foal. While in Australia, the trainer also buys a second hand horse float. The horse is broken in before being exported, but not raced or trained in any other way. The horse float is unused and towed by car to the wharf where it is dismantled and packed into a container to be loaded for export. Due to its earlier contact with animals, the float is disinfected. The breaking in of the horse is considered necessary to prepare the horse for export, as it is not normal procedure to air transport an unbroken racehorse. The towing of the horse float is a necessary part of its export, and similarly the treating, dismantling and packing of it is necessary to prepare the float for export*.

351. Any use of the goods which is essentially the same as the ultimate intended use or consumption of the goods is not considered necessary to prepare them for export.

Example 32 – Use of goods prior to export

352. *As in example 31, the New Zealand trainer is in Australia to purchase a thoroughbred foal. The trainer also buys saddles, bridles, horseshoes, and ropes that are used when breaking in the horse before export. The trainer also exports all of these goods. However, the use of the goods (other than the horse) before they are exported is essentially the same as the ultimate intended use of those goods and is not considered necessary to prepare them for export*.

353. The supplier must be satisfied on reasonable grounds that the goods supplied have not been used since their supply for a purpose other than is necessary to prepare them for export.

354. In the case of goods which are packaged, or containerised while still in the control of the supplier, or where delivered directly to a transport provider by the supplier, it is reasonable to conclude that the goods will not be used.

355. In the case where goods are supplied in a form which allows the goods to be easily used, the supplier should obtain a declaration from the recipient that the goods will not be used.

Paragraph 38-185(3)(e) – sufficient documentary evidence

356. A supplier is required to have sufficient documentary evidence to show that the goods were exported. This evidence does not usually come into existence at least until the goods are in the process of being exported

357. Where the supplier is the entity that actually exports the goods, the supplier is in receipt of evidence that shows that the goods are exported. However, where the supplier is treated as the exporter under subsection 38-185(3), the recipient is the exporting entity and the supplier will only know that the goods have been exported if the recipient provides the supplier with evidence of export. Thus the GST law specifically requires the supplier to obtain and hold such evidence.

358. The onus is on the supplier to obtain evidence that the goods were exported. If a supplier does not obtain and hold sufficient evidence to show that the goods have been exported, that is, the goods physically have left Australia on board a ship or aircraft for landing at some place outside Australia, the supplier cannot be treated as having exported them for the purposes of items 1 and 2. The supply is not GST–free.

359. Provided that there is no information to the contrary, a supplier will have sufficient documentary evidence to show that goods were exported where the documents held by the supplier provide a reasonable basis for an independent party to conclude that the goods were exported.

360. The information normally contained in the following documents would typically demonstrate that the goods have been exported:

(i) commercial documents in relation to the supply that identify the supplier, the recipient, the goods and the payment arrangements. This could include purchase orders, invoices, receipts, delivery dockets, banking records. The commercial documents should clearly link to the transport documents.

(ii) transport documents of the kind described in the table below.

Method of Export	Document	Evidences
Recipient engages shipping line or airline	Bill of lading Sea waybill Air waybill	Goods received by the shipping line or aircraft operator. Goods consigned to a foreign destination.
Recipient engages freight forwarder, consolidator, air express courier	House bill (air or sea) Consignment note Certificate of shipment Proof of Delivery (POD)	Goods received by international transport provider/arranger. Goods consigned to a foreign destination.
Recipient posts	Postal certificate	Goods received for posting to a foreign destination.
Recipient exports as accompanied baggage	Customs stamped proof of export (for example, export entry or stamped customs traveller guide form)	Goods carried through outwards customs barrier and sighted by Customs officer.

361. The transport documents would need to include information that identifies the goods, the destination, and the date of departure from Australia. These documents will be issued by an international transport provider, or an arranger of international transport services as evidence of that person's agreement to transport the goods.

362. As further evidence of the export of goods, a supplier may have documentation from Customs (such as an export entry) indicating that the goods were exported, or documents from a foreign Customs authority indicating that the goods were imported to that country. However, the documents listed in paragraph 360 is sufficient evidence for the purposes of paragraph 38-18(3)(e).

Example 33 – Sufficient documentary evidence to show that the goods have been exported.

363. *As in example 28, Koala Valley Winery sells 30 cases of wine to a French customer, but delivers the wine to a consolidator engaged by the buyer. The consolidator provides a delivery receipt upon*

receiving the wine. When the wine is finally shipped, the consolidator receives a bill of lading and subsequently issues a house bill to the French customer showing that the goods were transported to France. The French customer forwards a copy of the house bill to the Winery. These documents, along with the commercial invoices showing Pierre as the buyer and evidencing payment from a foreign source, are sufficient to demonstrate that the goods were exported.

364. Paragraph 38-185(3)(e) specifically requires that the supplier holds sufficient documentary evidence. At paragraphs 103 to 104 of the Ruling section, we explain when we expect that a supplier will obtain such evidence.

365. The requirements of subsection 38-185(3), in particular paragraph 38-185(3)(e), are likely to impact on the commercial arrangements between the supplier and the recipient as regards the supply of goods for export. For example, the sale transaction may be treated as GST-free because the recipient has undertaken to supply the required documentary evidence within a specified period of time. On the other hand, the sale transaction may be treated as taxable until the recipient provides the required information.

Example 34 – GST – free supply of goods for export but supplier recovers GST payable if goods are not exported.

366. *As in example 31, an Australian supplier sells a racehorse to a New Zealand horse trainer who signs a written declaration indicating an intention to export the horse from Australia and provide the supplier with documentary evidence. The parties negotiate the price on a GST-free basis, with an agreement that if the requirements of subsection 38-185(3) are not met within a specified period, or the recipient does not export the goods before or within the 60 day period (or such further time as the Commissioner allows), the supplier is entitled to increase the price payable so that the supplier can effectively recover the GST payable on the supply from the buyer.*

367. *It is reasonable for the supplier at this stage to account for the supply as a GST-free supply. After the expiry of the 60 day period (or such further period as the Commissioner has allowed) the buyer has failed to export the horse. The supply then becomes a taxable supply, and the supplier has to account for the GST payable on the supply, irrespective of whether the supplier has recovered the GST from the recipient.*

Example 35 - GST – free supply of goods for export but supplier recovers GST payable if goods are not exported.

368. *As in example 27, Black Stump Coal sells 10,000 tonnes of coal under an ex-works contract to a foreign buyer. Black Stump Coal has no further control of the goods after the buyer takes delivery of the coal at a mine in central Queensland. The Australian supplier is not the exporter and will not be sure that the coal is exported until the buyer provides sufficient documentary evidence. In light of this, and because Black Stump Coal does not know whether the foreign buyer is required to be registered, a clause is included in the contract to allow the supplier to increase the price payable so that the supplier can effectively recover the GST payable on the supply from the buyer in the event that any of the elements in subsection 38-185(3) are not met within a specified period of time. If after the expiry of the 60 days, the buyer has not exported the goods or the supplier has been unable to obtain sufficient documentary evidence that the goods were exported, the supply is a taxable supply. Black Stump Coal has a GST liability and recovers the amount from the buyer.*

Adjustment events

369. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit this gives rise to an adjustment event (refer paragraphs 200 to 204 above).

370. If the requirements of subsection 38-185(3) are not met, the supply is a taxable supply. A supplier, who has already accounted for the supply as GST-free on the basis that the requirements of subsection 38-185(3) and item 1or 2 are met will need to make an increasing adjustment.[70]

Example 36 – Increasing adjustment.

371. *As in example 34, an Australian supplier sells a racehorse to a New Zealand horse trainer who signs a written declaration indicating an intention to export the horse from Australia and provide the supplier with documentary evidence. The parties negotiate the price on a GST-free basis, with an agreement that if the requirements of subsection 38-185(3) are not met, the seller is entitled to increase the price payable so that the supplier can effectively recover the GST payable on the supply from the buyer.*

372. *It is reasonable for the supplier at this stage to account for the supply as a GST-free supply. After the expiry of the 60 day period (or*

[70] As the supply has changed from a GST-free supply to a taxable supply, this is an adjustment event under paragraph 19-10(1)(c).

such further period as the Commissioner has allowed) the buyer has failed to export the horse. The supply then becomes a taxable supply, and the supplier needs to make an increasing adjustment in the tax period in which the supplier becomes aware of the adjustment. The supplier must make the adjustment regardless of whether the supplier is successful in recovering the GST payable from the buyer.

Example 37 – Decreasing adjustment.

373. *A New Zealand buyer purchases a racehorse from an Australian supplier. In this case the buyer gives no indication that the horse is to be exported. The agreed price is GST-inclusive. The supplier's tax period ends and the supplier lodges a BAS remitting 1/11 of the price as GST for the taxable supply of the horse. If, before the end of the 60 day period, the recipient exports the horse and provides sufficient documentary evidence to the Australian seller, the supply becomes a GST-free supply, provided the other requirements of subsection 38-185(3) are satisfied. The supplier can then make a decreasing adjustment in the tax period in which the supplier becomes aware of the adjustment. The supplier becomes aware of the adjustment when the supplier receives sufficient documentary evidence that the horse has been exported.*

Documentary evidence

374. Suppliers are required to keep records that record and explain the transactions they engage in. The Explanatory Memorandum to section 38-185 states 'You must keep appropriate records to verify the export and when it happened.'[71] 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
>
> (aa) make a supply that is GST-free or input taxed; or…
>
> you must:
>
> (d) keep records that record and explain all transactions and other acts you engage in that are relevant to that supply…; and

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

(e) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.'

375. We consider that records will 'explain' a GST-free transaction made under section 38-185 if the records contain information that will enable an ATO officer with accounting skills and knowledge of export procedures to understand the essential features of the transaction.

376. For a supply that may be GST-free under section 38-185, the onus is on a supplier to be satisfied that goods have been exported and to have sufficient evidence to show that all of the requirements of the particular item have been met. For most items this includes records showing that goods were exported.

377. The documents should not only satisfy the supplier that the requirements of the item are met, given the supplier's specific knowledge of the supply, they should also provide a reasonable basis for an independent party to be satisfied that the requirements of the item are met.

378. The types of records available to a supplier will vary depending on the circumstances of the supply. Appendix B lists the types of transport documentation a supplier may have depending on the mode of transport used to export the goods. Appendix C 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.

379. With a combination of the documents listed in Appendices B and C the supplier should be able to evidence the export of goods. Suppliers may have other evidence to support their knowledge that the goods were exported and the elements of the particular item were met. For example, for unique goods such as famous works of art, media attention and public information may evidence the export of the goods.

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

Item 1

381. Under item 1, the supplier must have documentary evidence to show that the goods supplied were exported and that the supplier exported them within the specified time.

382. In most cases the documents a supplier obtains in the ordinary course of the transaction will be sufficient, provided normal commercial procedures are followed. These documents will usually consist of:

(a) the transport documents evidencing the carriage of the goods out of Australia;

(b) the commercial documents in relation to the supply that identify the supplier, the recipient, the goods and the payment arrangements. The commercial documents should clearly link to the transport documents; and

(c) Customs and other official documents.

Transport documents

383. Where goods are exported by direct engagement of a shipping line or airline, the supplier should retain the following documents depending on the mode of transport:

- Bill of Lading;
- Air waybill; or
- Sea waybill.

384. Where the supplier engages a freight forwarder, consolidator, international express courier or postal agency, at least one of the following documents should be retained by the supplier depending on the mode of transport:

- House bill;
- House sea or air waybill;
- Certificate of shipment;
- Consignment note;
- Postal certificate; or
- Proof of Delivery document.

385. The relevant transport document should contain a description of the goods, details of the sender, the destination and the date of issue.

Commercial documents

386. Transport documents should be supported by commercial records such as:

- purchase orders;

- contracts;
- invoices;
- receipts;
- bank statements;
- packing lists and delivery dockets; and
- freight and insurance invoices where applicable.

387. These documents should link the details of the supply of goods, with the details of their carriage out of Australia. These documents must clearly identify the following:

- the supplier;
- the recipient;
- the goods; and
- the price of those goods.

Vague descriptions of goods, quantities or values are not acceptable. For instance 'various whitegoods' is not acceptable when the correct description is '10 washing machines model no. WM 100 and 15 refrigerators model no. R 400'.

Customs and other official evidence

388. A supplier may obtain Customs and other official evidence such as the entry for export, or documentation from the foreign Customs authority evidencing the importation or arrival of the goods.

389. At paragraph 35, we set out a particular case where we consider that the documentary evidence is sufficient for an independent party to conclude that the goods were exported.

Item 2

390. In addition to the requirements set out in item 1, a supplier under item 2 requires evidence to show that the supply was made under a contract that required the goods to be exported, and that the consideration is or was provided in instalments.

391. Documents which provide evidence of this include sales contracts, quotations, purchase orders and invoices.

Item 3

392. Under item 3, a supplier needs documentary evidence to show that the recipient exported the ship or aircraft. In most cases the

supplier will obtain this evidence from the recipient after departure, or at a time immediately before departure.

393. Evidence of the departure of a ship or aircraft from Australia is the final certificate of clearance issued by Customs. Provided there is no information to the contrary, we accept this is sufficient evidence.

394. A supplier who does not have a copy of the final certificate of clearance will need a combination of other evidence, which, as a whole, provides a reasonable basis for the conclusion that the ship or aircraft was exported. A supplier may have documents such as the entry for export, documents issued by the foreign customs authority evidencing arrival of the ship or aircraft, evidence of foreign registration of the ship or aircraft and commercial evidence as outlined under item 1.

Item 4

395. In addition to the evidence required under item 3, a supplier needs evidence that the supply was made under a contract that required the goods to be exported, and that the consideration is or was provided in instalments.

396. Such evidence is the same as described under item 2.

Item 5

397. Under item 5, a supplier needs to have evidence showing that the goods supplied are ship's stores or spare parts, aircraft's stores or spare parts and that the flight or voyage has a destination outside Australia.

398. For supplies to commercial ships and aircraft, the documentary evidence could include:

- purchase orders from the airline or shipping line;
- Customs approval to load duty free stores;
- delivery dockets or receipts signed by the master or pilot evidencing delivery of the stores or spare parts directly to the ship or aircraft; and
- shipping routes and schedules and flight timetables may provide evidence of the international voyage.

399. For supplies to private ships or aircraft, a supplier is also expected to have evidence that the ship or aircraft departed on an international voyage. The final certificate of clearance for departure issued by Customs is evidence of this. A supplier may obtain a copy

of this certificate before departure or a copy may be forwarded to the supplier by the recipient, subsequent to departure.

400. A supplier may not be able to obtain a copy of the final certificate of clearance. A supplier needs to obtain other evidence that the ship or aircraft is on an international voyage. This may be in the form of confirmation with Customs that an appointment has been made for clearance of a yacht for departure from Australia in conjunction with a copy of a small craft cruising permit with an imminent expiry date or temporary import documents. Other supporting evidence may include 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. The declaration should show the date of departure, destination and name of vessel.

401. Generally an appointment for clearance to depart is made less than four days before the yacht's departure from Australia. We consider 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. We do not consider that goods supplied before this time are for use, consumption or sale on an international voyage. A supplier could confirm such a booking with Customs.

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

Item 6

403. Under item 6 a supplier needs evidence to show that the goods being repaired, renovated, modified or treated are from outside Australia and have a destination outside Australia.

404. Suitable documentary evidence includes:

- Customs entry for home consumption in respect of the goods (such entry may indicate temporary importation, such as a tariff concession under item 21 of the *Customs Tariff Act 1995* or by the taking of security in respect of the import duty payable);
- Other documentation, such as for imports under international carnets and for the movement of international shipping containers under Customs Convention on Containers 1972;
- International transport evidence showing the export of the goods (as discussed under item1), see paragraphs 383 to 385; and

- Customs documents relating to the export of the goods (as discussed under item 1), see paragraph 388.

405. A supplier should also retain commercial evidence as discussed in item 1.

406. Where the goods being repaired, renovated, modified or treated are a ship or aircraft that has not been entered for home consumption, a supplier should have the following evidence (where applicable):

- documents relating to the foreign ownership of the ship or aircraft;
- evidence of shipping routes or schedules, or flight timetables;
- Customs cruising permit (for visiting small craft);
- a copy of the recipient's passport (for owners of small craft);
- a declaration from the recipient that the ship or aircraft has a destination outside Australia. The declaration should include the approximate date of departure, destination and name of the vessel; and
- Customs certificate of clearance as evidence of departure of the ship or aircraft.

407. Provided there is no information to the contrary, we accept the final certificate of clearance as sufficient evidence that the ship or aircraft had a destination outside Australia.

Other issues

Chain sales

408. Sometimes goods sold under a contract of sale the terms of which are FOB (or CIF or DDP[72]) are resold, one or more times, before the goods leave Australia. For example, Aus Co sells goods to Japan Co on the basis of FOB to Japan. Before the ship with the goods on board departs Australia for Japan, Japan Co sells the goods to NZ Co on the basis of FOB to New Zealand. These resales are commonly known as 'chain sales'. The issue is whether the initial sale ceases to be a GST-free export in these circumstances. Also, the question arises as to whether the second sale and any subsequent resales are connected with Australia.

[72] Or other terms of sale which require the supplier to deliver the goods on board a ship that has been engaged to carry those goods to an overseas destination. For example, CFR.

409. If the first sale is under a contract of sale the terms of which are FOB (or CIF or DDP[73]) for shipment to a country outside Australia, the supply of those goods is connected with Australia as the supply of goods involves the goods being removed from Australia (subsection 9-25(2)). That supply of goods is GST-free provided the following requirements are met:

(a) the supplier (or another party acting for the supplier such as a freight forwarder) is the entity that delivers the goods on board the ship;

(b) that ship has been engaged to carry those goods to an overseas destination; and

(c) that ship departs its final Australian port and leaves Australia, with the goods on board for landing at a place outside Australia, before the end of the 60 day period (or such further period as the Commissioner allows).

410. If before the ship departs Australia the goods are on sold one or more times on a FOB (or CIF or DDP[74]) basis for delivery to the same or another foreign country, the second and any subsequent chain sale of those goods on these terms is not a supply of goods connected with Australia and is not, therefore, a taxable supply. This is because the second and subsequent sales do not involve the goods being removed from Australia,[75] only the first supply of goods involves removal from Australia. Also, the goods are not delivered, or made available, in Australia.[76] The goods are physically delivered, or made available, to the recipient at an overseas destination. This is the case even if one of the recipient companies in the chain sale is an Australian company registered for GST purposes.

Example 38 – chain sales of goods.

411. *As in example 1, Oz Wool delivers the wool on board a ship in Melbourne according to the FOB terms of sale to China Knits. The wool is consigned to Hong Kong. While the ship is travelling out of the Port of Melbourne, China Knits sells the wool at a profit to Australia House Corp, an Australian resident trader in commodities. When the ship is at some point between Brisbane and Asia, Australia House Corp re-sells the wool to Asia Textile Co. The negotiable bill of lading passes through the various hands to Asia Textile Co. which takes delivery of the Australian wool in Hong Kong. The supplies by China Knits and Australia House Corp are not connected with*

[73] Ibid.
[74] Ibid.
[75] Subsection 9-25(2).
[76] Subsection 9-25(1).

Australia. The goods are not physically delivered or made available in Australia to the recipient of the supply and the supply does not involve the goods being removed from Australia. The supply by Oz Wool is a GST-free export.

412. If the first sale does not involve the goods being removed from Australia, rather the goods are physically delivered, or made available in Australia, that supply is not GST-free under items 1 or 2 of subsection 38-185(1). The supplier does not export the goods.[77]

413. However, if the recipient of that supply is not registered or required to be registered and that recipient exports the goods, the first supply is GST-free if the requirements of subsection 38-185(3) are met and the other requirements of item 1 (or item 2) are met.

Example 39 – Recipient is not registered or required to be registered.

414. *Aus Co is registered for GST. Aus Co produces and sells goods to NZ Co. NZ Co is not registered for GST and is not required to be registered. NZ Co is a resident of New Zealand and does not make supplies connected with Australia. The terms of sale as between Aus Co and NZ Co is FAS. That supply is connected with Australia as the goods are physically delivered in Australia (subsection 9-25(1)).*

415. *NZ Co sells the goods it acquires from Aus Co to a customer also resident in New Zealand. The terms of sale as between NZ Co and the New Zealand customer are FOB with a destination of Wellington, New Zealand. Thus NZ Co, the recipient, exports the goods to New Zealand.*

416. *In these circumstances Aus Co is treated as having exported the goods if the requirements of subsection 38-185(3) are met. Before the goods are exported, Aus Co supplies the goods to an entity, NZ Co., that is not registered or required to be registered and that entity exports the goods from Australia. The requirements of paragraphs 38-185(3)(a) and (b) are met. Provided that*:

- *the goods are entered for export*;
- *since their supply to NZ Co, the goods are not altered or used in any way, except to the extent necessary to prepare them for export; and*
- *the supplier, Aus Co, has documentary evidence to show that the goods were exported,*

[77] A resale of these goods on the basis of FOB (or CIF or DDP) with delivery overseas is also connected with Australia, as the resale is a supply that involves the goods being removed from Australia. The second supply is GST-free if the requirements of item 1 or 2 are met. Where the recipient exports the goods the requirements of subsection 38-185(3) must also be met.

all the requirements of subsection 38-185(3) are met.[78] *The supplier, Aus Co, is treated as having exported the goods for the purposes of item 1 (or item 2).*

417. *If the other requirements of item 1 (or item 2) are met the supply of goods by Aus Co is GST-free.*

418. *The supply of goods from NZ Co to the New Zealand customer is connected with Australia because the supply involves the goods being removed from Australia. If the terms of sale as between NZ Co and the New Zealand customer are FOB or CIF or DDP to Wellington, New Zealand, NZ Co, the supplier, exports the goods for the purposes of item 1 (or item 2). Provided the other requirements of the relevant item are met the supply by NZ Co to the customer in New Zealand is GST-free.*

Example 40 – Recipient is registered or required to be registered.

419. *As in example 39 but NZ Co is registered or required to be registered for GST. In that case, the supply of goods from Aus Co to NZ Co is a taxable supply. Subsections 38-185(1) and (3) do not apply to make the supply GST-free. If the terms of sale as between NZ Co and New Zealand customer are FOB (or CIF or DDP) to Wellington, New Zealand, NZ Co, the supplier exports the goods for the purposes of item 1 (or item 2). Provided the other requirements of the relevant item are met the supply by NZ Co to the customer in New Zealand is GST-free.*

Adjustment events

420. If a supplier having supplied the goods GST-free, subsequently becomes aware that the goods were not exported or the goods were not exported within the specified time limit this gives rise to an adjustment event (refer paragraphs 200 to 204 above).

[78] However, if the goods are reimported into Australia the supply is not GST-free unless the reimportation is a taxable importation.

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Your comments

422. If you wish to comment on this draft Ruling, please send your comments promptly by **12 October 2001** to:

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Commissioner of Taxation
29 August 2001

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

GSTR 2000/19; GSTR 1999/1

Subject references:

- aircraft
- aircraft stores
- air express courier
- air waybill
- Australia
- bill of lading
- chain sales
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- cost insurance & freight (CIF)
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Legislative references:

- AI 1901 15B(1)(b)
- AI 1901 15B(4)
- ANTS(GST)A99 9-5
- ANTS(GST)A99 9-25(1)
- ANTS(GST)A99 9-25(2)
- ANTS(GST)A99 19-10(1)(c)
- ANTS(GST)A99 13-5
- ANTS(GST)A99 23-5
- ANTS(GST)A99 23-15
- ANTS(GST)A99 29-20(1)
- 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 2
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- ANTS(GST)A99 38-185(1) item 6(a)
- ANTS(GST)A99 38-185(1) item 6(b)
- ANTS(GST)A99 38-185(1) item 7
- ANTS(GST)A99 38-185(2)
- ANTS(GST)A99 38-185(3)
- ANTS(GST)A99 38-185(3)(a)
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- ANTS(GST)A99 38-185(3)(d)
- ANTS(GST)A99 38-185(3)(e)

- ANTS(GST)A99 38-190
- ANTS(GST)A99 38-190(1)
- ANTS(GST)A99 38-190(1) item 2
- ANTS(GST)A99 38-190(1) item 5
- ANTS(GST)A99 195-1
- CA 1901 5C
- CA 1901 113
- CA 1901 129
- CA 1901 130C
- CA 1901 195-1
- CTA 1995 Item 21
- EMDGA 1974
- LITA 1954 129B
- S&SLA 1973
- TAA 1953 37
- TAA 1953 70

Case references:

- *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517
- *Board of Trade v. Baxter* [1907] AC 373
- *BP Australia Ltd v. Bissaker* [1987] 163 CLR 106
- *Camelo v. Britten* (1820), 4B & Ald. 184; 106 ER 906
- *Federal Commissioner of Taxation v. Hamersley Iron Pty Ltd* 81 ATC 4582; 12 ATR 429
- *FC of T v. Chaudhri* (2001) 2001 ATC 4214 at 4216; (2001) 47 ATR 126
- *Henty v. Bainbridge Hawker* (1963) 36 ALJR 354
- *Inland Revenue Commissioner (NZ) v. International Importing Ltd* 3 ATR 173; 71 ATC 6033
- *Staatssecretaris van Financin v. Velker International Oil Co NV, Rotterdam* (Case 185/89) [1991] BVC 108
- *The Commonwealth v. Sterling Nicholas Duty Free Pty Limited* (1972) 126 CLR 297
- *Wesley-Smith v. Balzary* (1976-77) 14 ALR 681

ATO references:
NO T2001/09845; T2001/014150
ISSN: 1443-5160

APPENDIX A

SUFFICIENT DOCUMENTARY EVIDENCE

An exporter must have sufficient documentary evidence to explain the transaction and to show that the goods were exported.

Appendix B lists the types of transport documentation that a supplier may have depending on the mode of transport used to export the goods.

Appendix C lists the type of commercial documentation and official documents that a supplier may have to explain the transaction.

The lists in Appendices B and C are not exhaustive but merely demonstrate the types of documentation available to explain the transaction and to show that goods have been exported.

APPENDIX B

TRANSPORT DOCUMENTS

Document Type		Information	Evidences…
Primary Transport Documents	Bill of lading Sea waybill Air waybill	Sender's name Receiver's name Destination of goods Description of goods Marks and Numbers (packaging identification) Date loaded Place loaded Terms of trade (Incoterm) Name of ship and voyage number/ aircraft flight number	Who is the exporter The goods were exported There was a supply of goods Same goods supplied were exported 60 day rule Who is exporter
Secondary Transport Documents	House bill (air or sea)	Sender's name Receiver's name Destination of goods Description of goods Marks and Numbers (packaging identification) Date loaded Place loaded Name of ship and voyage number/ aircraft flight number	Who is the exporter The goods were exported There was a supply of goods Same goods supplied were exported 60 day rule
	Certificate of shipment	Sender's name Receiver's name Destination of goods Description of goods Date received by freight forwarder / consolidator	Who is the exporter The goods were exported There was a supply goods 60 day rule
	Consignment note Postal Certificate	Sender's name Receiver's name Destination of goods Description of goods Date received by courier/post office	Who is the exporter The goods were exported There was a supply of goods 60 day rule
Other Evidence of Transport	Proof of Delivery (POD)	Sender's name Receiver's name Place of delivery overseas Description of goods Date delivered at destination	Who is the exporter The goods were exported There was a supply of goods The goods were exported

APPENDIX C
COMMERCIAL TRANSACTION DOCUMENTS AND OFFICIAL DOCUMENTS

Document Type		Information	Evidences…
Commercial Transaction Documents prepared by buyer/ recipient or seller	Purchase order Invoice Sales Contract Evidence of payment (receipts/bank statements) Packing list Delivery docket Letter of engagement to international transport provider Purchase order for aircraft/ ship's stores Receipt of aircraft/ ship's stores Declaration requirement to be registered	Supplier's name and address Purchaser's name and address Place of delivery Price Description and quantity of goods Marks and Numbers (packaging identification) Terms of trade and payment arrangements Invoice date Date of payment Stores for use on aircraft /ship embarking on international voyage Declares whether recipient is required to be registered	Who is the exporter Contract requires goods to be exported There was a supply of goods Same goods supplied were exported Contract requires goods to be exported / consideration in instalments 60 day rule 60 day rule and supply Entitlement to aircraft/ship's stores Registration status of recipient
Other Commercial Transaction Documents prepared by third parties	Domestic carriage invoice International freight and insurance invoices Invoices for loading and handling charges Shipping/flight schedules/routes	Place of local delivery Description and quantity of goods Marks and Numbers (packaging identification) Place of delivery overseas Date Destination and time of departure	Commencement of export There was a supply of goods Same goods supplied were exported Goods exported 60 day rule Entitlement to aircraft/ship's stores
Official Documents Issued by Government bodies	Export entry Export permit Customs certificate of clearance (small craft) Approval under s.129 of the Customs Act	Export Clearance Number (ECN) Destination Description of goods Name of vessel Voyage number/ aircraft flight number Approval to uplift duty free stores	Goods were exported Goods were exported Same goods supplied were exported Departure from final port (exports of ships and aircraft) Entitlement to GST-free stores

OFFICIAL DOCUMENTS
(CONT'D)

Official Documents Issued by Government bodies	Import Entry Cruising Permit (Customs permission to visit Australian ports) Port permit Passport/visa	Origin of goods Description Date of arrival Temporary import status Intended departure date and destination (small craft) Identity and nationality of recipient	Goods from outside Australia Intention that destination is outside Australia
	Overseas Customs import documents	Place of delivery Date delivery Description of goods	Goods were exported Goods exported and 60 day rule Same goods supplied were exported

APPENDIX D

What are "terms of trade" or "Incoterms"?

Terms of trade or "Incoterms" are a set of uniform rules codifying the interpretation of trade terms used in international trade. Incoterms are drafted by the International Chamber of Commerce and on 1 January 2000 a new set of rules were published as Incoterms 2000. A brief summary of each term is provided in the table below.

The Incoterms only deal with the relation between sellers and buyers under the contract of sale. The scope of the Incoterms is limited to matters relating to the rights and obligations of the seller and buyer with respect to delivery of goods sold. The terms "are designed to arrange for the transfer of risk from Seller to Buyer at an unambiguous convenient place where goods can be inspected."[79] Incoterms do not cover, amongst other matters, transfer of ownership – that is, they do not relate to when or where title changes.

You will note that the seller's obligations increase as we go down the table .

Note that the terms are divided into 4 categories.

The *"E"-term* is where the seller's obligation is at its minimum. The seller usually places the goods at the buyer's disposal at the seller's own premises. In practice, the seller frequently assists the buyer to load the goods on the collecting vehicle.

The *"F"-terms* require the seller to deliver goods for carriage as instructed by the buyer.

The *"C"-terms* require the seller to contract for carriage. As with the "F"-terms, the seller fulfils the contract in the country of shipment or dispatch (i.e., contracts of sale are *departure or shipment contracts*). However, the division of costs (between seller and buyer) is fixed at a point in the country of destination.

The *"D"-terms* are different in nature from the "C"-terms. The seller is responsible for the arrival of goods within the country of import (i.e., contracts are *arrival contracts*).

[79] The Merchants Guide P&O Nedlloyd December 1999 at page 14.

INCOTERMS 2000

EXW	**Ex works** The seller places the goods at the disposal of the buyer at the seller's premises.
FCA	**Free Carrier** The seller delivers the goods to the carrier nominated by the buyer. The seller also clears the goods for export.
FAS	**Free Alongside Ship** The seller places the goods alongside the vessel nominated by the buyer. The seller also clears the goods for export.
FOB	**Free On Board** The seller delivers the goods over the ship's rail at the port of shipment. The seller also clears the goods for export.
CFR	**Cost and Freight** The seller delivers goods over the ship's rail and pays costs and freight to bring the goods to the port of destination. The seller also clears the goods for export. However, the buyer is responsible for loss or damage to the goods.
CIF	**Cost Insurance and Freight** The seller delivers goods over the ship's rail and pays costs and freight to bring the goods to the port of destination. The seller also clears the goods for export and obtains marine insurance against the buyer's loss or damage to the goods during the carriage.
CPT	**Carriage Paid To** The seller delivers the goods to the carrier nominated by him and pays the cost of carriage to bring the goods to the named destination.
CIP	**Carriage and Insurance Paid To** The seller delivers the goods to the carrier nominated by himself, and pays the cost of carriage to bring the goods to the named destination, and procures insurance against the buyer's loss or damage to the goods during the carriage.
DAF	**Delivered at Frontier** The seller places the goods at the disposal of the buyer at a named frontier (e.g., country of export). The goods are not unloaded and are before the Customs border of the adjoining country. (This is used when there are land frontiers).
DES	**Delivered Ex Ship** The seller places the goods at the disposal of the buyer at a named port of destination. The goods are not unloaded. (This is used when the goods are delivered by sea or inland waterway).

INCOTERMS 2000
(CONT'D)

DEQ	**Delivered Ex Quay** The seller places the goods at the disposal of the buyer on the quay (wharf) at a named port of destination. The goods are discharged on the quay (wharf). The buyer clears the goods for import.
DDU	**Delivered Duty Unpaid** The seller delivers the goods to a named place of destination. The goods are not unloaded. The buyer pays any duty (including taxes).
DDP	**Delivered Duty Paid** The seller delivers the goods to a named place of destination. The goods are not unloaded. The seller also pays any duty (including taxes).

References: *Incoterms 2000*, The International Chamber of Commerce official rules for the interpretation of trade terms.