

GSTR 2002/D11 - Goods and Services Tax: importation of goods into Australia

 This cover sheet is provided for information only. It does not form part of *GSTR 2002/D11 - Goods and Services Tax: importation of goods into Australia*

There is an Erratum notice for this document.

This document has been finalised.

GSTR 2002/D11

- Division 15 - Creditable importations;
- Section 29-15 - Attributing the input tax credits for your creditable importations;
- Section 33-15 - Payments of amounts of GST on importations;
- Division 38 – GST-free supplies;
- Division 42 – Non-taxable importations;
- Division 57 – Resident agents acting for non-residents;
- Division 114 – Importations without entry for home consumption;
- Division 117 - Valuation of re-imported goods.

7. This Ruling only relates to the importation of goods.¹ It does not address the importation of services and intangibles covered by Division 84.

8. All legislative references in this Ruling are to the GST Act unless otherwise stated. References to the Customs Act are to the *Customs Act 1901*.

9. In this Ruling, the term ‘agent’ is used to describe an entity that is appointed to undertake, on behalf of another, the principal, the entering of imported goods for home consumption (within the meaning of the Customs Act). The principal is thereby bound by the legal effects of that transaction. The term agent as used in this Ruling does not include a licensed Customs Broker, unless specifically stated to be so included.

Date of effect

10. This draft Ruling represents the preliminary, though considered, view of the Australian Taxation Office. This draft may not be relied on by taxation officers, taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applied from 1 July 2000.

11. The final Ruling will be a public ruling for the purposes of section 37 of the *Taxation Administration Act 1953* (‘TAA 1953’) and may be relied upon, after it is issued, by any entity to whom it applies. Goods and Services Tax Ruling GSTR 1999/1 explains the GST

¹ ‘Goods’ defined in subsection 195-1(1) means ‘any form of tangible personal property’. Therefore, goods does not include intangible things, such as computer software downloaded over the Internet.

179. This example highlights the importance of ensuring that the entity seeking to claim the credit is also liable to pay the GST on the taxable importation.

180. An entity that causes goods to be brought to Australia may engage a customs broker or an agent to make the taxable importation on its behalf. In that case, that entity both causes the goods to be brought to Australia and is liable to pay the GST on the taxable importation.

Example 5 – Facilitation of an importation – specialised goods transporter

181. *The same facts as in Example 4 but the horse transporter enters the horse for home consumption as agent for Jill. The horse transporter obtains a written agency agreement from Jill, outlining the authority to make the taxable importation of the horse on her behalf. The terms of the agency also entitle the horse transporter to be reimbursed by Jill for the GST paid on her behalf. In that case Jill both causes the goods to be brought to Australia and is liable to pay the GST on the imported horses. Jill is entitled to claim an input tax credit for the GST paid on the horses. If the goods are entered in the name of Jill, it is clear that she is liable for GST. Where the horse transporter is also a licensed customs broker, the horse can be entered in Jill's name. The horse transporter may also engage a customs broker, and arrange clearance in Jill's name by demonstrating that Jill is the 'owner' of the horse.*

182. The entity that makes the taxable importation and pays the GST is likely, in practice, to be the entity that also causes the goods to be brought to Australia. However, as demonstrated by example 4, making the taxable importation alone does not, of itself, identify the entity that imports the goods even though it is one of the elements of the importation process.

183. As noted in paragraph 98, taxable importations can be made by anyone who satisfies the definition of 'owner' in the Customs Act. The definition is wide and includes entities that do not cause goods to be brought to Australia. For example, a consignee of a bulk shipment of goods may simply be a warehousing depot that unbundles and dispatches the goods at the direction of others. The consignee may make the entry for home consumption for the entity bringing the goods to Australia for consumption, use or application in its enterprise. The consignee is not the entity importing the goods for the purposes of section 15-5 and has no credit entitlement. Also, in these circumstances the entity that causes the goods to be brought to Australia cannot claim the credit because it does not pay the GST (unless the consignee is the agent of the importing entity, such that the

entity that causes the goods to be brought to Australia pays the GST through its agent)

184. For input tax credit entitlement purposes, the entity that causes the goods to be brought to Australia must ensure that it enters the goods for home consumption by appearing as 'owner' on the entry, or appointing an agent to do so on its behalf.

185. If the importing entity engages a customs broker to complete the customs formalities on its behalf, the broker enters the name of the importing entity as 'owner' on the entry. A customs broker is licensed under the Customs Act to complete entries on behalf of 'owners'.

186. If the importing entity engages an agent that is not a customs broker, the agent would also generally enter the name of the importing entity on the entry. The agent does this by itself engaging a customs broker, and disclosing to the broker that it is acting on behalf of the importing entity.

More than two parties involved in the purchase of imported goods

187. Most importations involve two parties, an overseas supplier and a resident acquirer. However, there are situations where several entities have an interest in goods being imported. This occurs, for example, when goods required by party A have to be obtained by party B from an overseas supplier. To determine which entity imports, it is necessary to establish which entity both causes the goods to be brought to Australia to consume and is liable to pay the GST on importation.

188. Several contracts of sale may be entered into before the goods arrive in an Australian port for unloading. In these cases, all the parties to the contracts of sale cause the goods to be brought to Australia to consume. For example, the overseas supplier causes the goods to be brought to Australia to consume by way of sale to B; B causes the goods to be brought to Australia to consume by way of sale to A; and A causes the goods to be brought to Australia to consume by way of use for their designed purpose in A's enterprise. Whichever of these entities completes the customs formalities and is liable to pay the GST, thereby satisfying both requirements set out at paragraph 154, is the entity that imports the goods.

that the 'owner' as per the customs entry was acting as agent on behalf of the importing entity.

307. If the entity that makes the taxable importation and pays the GST is not the entity that imports the goods into Australia, it does not make a creditable importation and therefore cannot claim the input tax credits.

308. To be entitled to input tax credits on a taxable importation, a registered entity must have paid (or deferred) the GST, be the entity that causes the goods to be brought to Australia to consume by way of supply, use or other application, and have a creditable purpose for importing the goods.

Example 13 - Attribution of input tax credit

309. *An Australian car dealer purchases 50 Japanese cars from a Japanese car dealer and brings them to Australia to sell. The Australian car dealer completes the customs formalities and pays the GST on the taxable importation. The car dealer is the entity that causes the cars to be brought to Australia by way of sale in his business, which is a creditable purpose. The car dealer has made a creditable importation and is entitled to the input tax credits. The car dealer attributes the input tax credit to the tax period in which he pays the GST.*

Further examples

Examples of entities that import goods for the purposes of paragraph 15-5(a)

310. Goods are imported into Australia under many circumstances. Typically, they are sent from overseas as a result of being supplied or acquired by way of sale, hire or lease.

311. Other reasons for importing goods include non-resident entities importing 'on consignment', or residents importing their own goods from overseas. For example, a resident company transferring goods from a branch office located overseas.

Example 18 – Hire of goods located overseas and subsequently imported

327. *Clang and Bang, a UK resident heavy metal band, is about to tour all Australian capital cities as part of their world tour. Prior to commencing the tour Clang and Bang engages an American management company to undertake all functions associated with the tour including providing the sound equipment and arranging movement, assembly and disassembly of the stage and lighting. The US management company hires state of the art sound equipment from a UK based hire company. The sound equipment is to be imported into each of the countries in which the band is appearing, commencing with Australia. The US management company pays for all the transportation costs from the UK, customs formalities, including entry for home consumption, and delivery of the equipment to the venues. The UK hire company has no role in the importation of the goods.*

328. *The obligations of the UK hire company are complete when the US management company takes possession of the goods in the UK. The UK hire company retains legal ownership of the equipment. The US management company causes the goods to be brought to Australia to use as part of its contractual obligations to provide the equipment and support services to Clang and Bang. The US management company is the entity that has the right to apply the goods after importation. As the US management company also pays the GST on importation, it is the entity that imports the goods into Australia for the purposes of paragraph 15-5(a). The US management company is entitled to the input tax credit for the creditable importation, if it is registered, or required to be registered.*

329. *The UK hire company does not make a taxable supply to the US management company. The supply is not connected with Australia as the equipment is not delivered, or made available, in Australia (subsection 9-25(1)) and the UK hire company neither imports the goods into Australia nor installs or assembles the goods in Australia (subsection 9-25(3)).*

330. *The supply between the US management company and Clang and Bang is a taxable supply to the extent that the services are performed in Australia.*

Example 19 – Personally owned goods

331. *Mr Spinner, a recently arrived Australian resident, is establishing a woollen mill in Australia to produce wool for export. Prior to arrival in Australia Mr Spinner owned a similar business in New Zealand and imports the machinery he owned and used in that*

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APPENDIX B - Subsection 42-5(1) - Non-taxable importations -
Schedule 4 to the *Customs Tariff Act 1995* page 66 to 67

Your comments

343. If you wish to comment on this draft ruling, please send your comments promptly by **7 February 2003** to:

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Commissioner of Taxation

19 December 2002

GSTR 2002/D11**APPENDIX A****Division 114 - Importations without entry for home consumption****114-5 Importations without entry for home consumption**

- (1) You make a taxable importation if:
- (a) the circumstances referred to in the third column of the following table occur; and
 - (b) you are referred to in the fourth column of the table as the importer in relation to those circumstances.

However, there is not a taxable importation to the extent that the importation to which the circumstances relate is a non-taxable importation.

Division 114 - Importations without entry for home consumption

| Item | Topic | Circumstance | Importer |
|-------------|---|--|--|
| 1 | Personal or household effects of passengers or crew | Goods of a kind referred to in paragraph 68(1)(d) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act. | The person to whom the authorisation was granted |
| 2 | Low value consignments by post | Goods of a kind referred to in paragraph 68(1)(e) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act. | The person to whom the authorisation was granted |
| 3 | Other low value consignments | Goods of a kind referred to in paragraph 68(1)(f) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act. | The person to whom the authorisation was granted |
| 4 | Other goods exempt from entry | Goods of a kind referred to in paragraph 68(1)(i) of the Customs Act are delivered into home consumption in accordance with an authorisation under section 71 of that Act. | The person to whom the authorisation was granted |
| 5 | Like customable goods | Goods are delivered into home consumption in accordance with a permission granted under section 69 of the Customs Act. | The person to whom the permission was granted |

GSTR 2002/D11**Division 114 - Importations without entry for home consumption (Continued)**

| Item | Topic | Circumstance | Importer |
|-------------|--|--|---|
| 6 | Special clearance goods | Goods are delivered into home consumption in accordance with a permission granted under section 70 of the Customs Act. | The person to whom the permission was granted |
| 7 | (Repealed by No 176 of 1999) | | |
| 8 | (Repealed by No 176 of 1999) | | |
| 9 | (Repealed by No 176 of 1999) | | |
| 10 | Return of seized goods | Goods that have been seized under a warrant issued under section 203 of the Customs Act, or under section 203B or 203C of that Act, are delivered to a person on the basis that they are not forfeited goods. | The person to whom the goods are delivered |
| 11 | (Repealed by No 176 of 1999) | | |
| 12 | (Repealed by No 176 of 1999) | | |
| 13 | Inwards duty free shops | Goods that are *airport shop goods purchased from an *inwards duty free shop by a *relevant traveller are removed from a *customs clearance area. | The relevant traveller |
| 14 | COMPILE contingency arrangements | Goods are taken into home consumption in accordance with a permission granted under section 77D of the Customs Act. | The person to whom the permission is granted |
| 15 | Installations and goods on installations | Goods are deemed by section 49B of the Customs Act to be imported into Australia. | The person who is the owner (within the meaning of the Customs Act) of the goods when they are deemed to be so imported |
| 16 | Goods not entered for home consumption when required | Goods not covered by any other item of this table are imported into Australia, and: (a) if they are required to be entered under section 68 of the Customs Act - they are not entered in accordance with that requirement; or (b) in any other case - a requirement under that Act relating to their importation has not been complied with. | The person who fails to comply with that requirement |

GSTR 2002/D11**APPENDIX B****Subsection 42-5(1) - Non-taxable importations****Schedule 4 to the *Customs Tariff Act 1995***

| Schedule 4 Item | Description <i>(The following descriptions are provided as a guide only. Refer to the legislation for the full description)</i> |
|----------------------------|---|
| 4 | Goods owned by and for official use of the government of a country other than Australia |
| 8 | Goods for use by or sale to persons the subject of a Status of Forces Agreement |
| 15 | Goods imported by passengers and crew, inward duty free purchases, goods brought in or sent to Australia by members of the Defence Force stationed outside Australia, goods imported by members of forces of Canada, New Zealand, or United Kingdom, and passengers' personal effects |
| 18A | Goods, or parts of goods, previously imported into Australia and returned after repair overseas free of charge in accordance with the provisions of a warranty applicable to the previously imported goods |
| 18B | Goods, or parts of goods, supplied free of charge under the provisions of a warranty to replace goods or parts of goods previously imported into Australia |
| 18C | Goods, or parts of goods, supplied free of charge as part of a global product safety recall due to a product safety fault |
| 21 | Goods that are imported for repair, alteration or industrial processing and are to be exported |
| 21A | Goods imported by a holder of a TRADEX order |
| 23A | Goods donated or bequeathed by non residents to an organisation established in Australia for the purposes of performing work of a philanthropic nature |
| 23B | Goods donated or bequeathed to the public or a public institution |
| 24 | Goods that are not to be sold or to be used for the purpose of trade that became the property of the importer under a will or intestacy of a deceased person |
| 25A | Trophies won outside Australia |
| 25B | Decorations, medallions or certificates awarded or to be awarded outside Australia and sent from outside Australia to persons within Australia |
| 25C | Trophies or prizes sent by donor residents outside Australia for presentation or competition in Australia |
| 32A | Goods on which no duty is payable and the value is insubstantial |

GSTR 2002/D11**Subsection 42-5(1)- Non-taxable importations****Schedule 4 to the Customs *Tariff Act 1995*****(continued)**

| | |
|-----|--|
| 32B | Goods on which the amount of duty that, but for this item, would be payable and the value are insubstantial |
| 33A | Calenders, catalogues and overseas travel literature, overseas price lists and other overseas printed matter |
| 33B | Samples of negligible value |
| 64 | Goods imported by, or on behalf of, non-Australian Olympic and Paralympic Family members, for use in, or for purposes related to, the Sydney 2000 Olympic Games, the Sydney Paralympic Games etc |