GSTR 2018/2EC - Compendium

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Public advice and guidance compendium – GSTR 2018/2

This is a compendium of responses to the issues raised by external parties to draft GSTR 2017/D1 *Goods and services tax: supplies of goods connected with the indirect tax zone (Australia).*

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO response / action taken
1	**How item 4 of the table in subsection 9–26(1) of the Goods and Services Tax (GST Act) applies to chain leases** 'In the event the ATO does not apply item 4 to each individual lease in a chain of leases, we are concerned that it will have the effect of requiring non-residents to register for GST and report wash transactions, the circumstances that these provisions were enacted to prevent.' (paragraphs 56 to 58). The taxpayer gives an example of a chain of aircraft leases and the consequences of item 4 with the effects they outline as follows: 'Although we acknowledge that the ATO's interpretation in GSTR 2017/D1 aligns with a strict literal interpretation of the words in item 4, we consider that it imposes undue and unnecessary GST compliance obligations on non-resident entities and the ATO, for no net benefit to revenue. 'It imposes an upfront burden on non-residents to register for Australian GST, as well as an ongoing compliance burden in preparing and lodging periodic activity statements reporting solely on B2B supplies that are fully creditable to the entities in the chain of leases. As such, it contradicts the	Paragraph 59 of the draft Ruling has not been included in the final Ruling. There has otherwise been no further change from GSTR 2017/D1 in relation to this comment. Some views have been raised that item 4 in the table of paragraph 9-26(1)(c) should apply to 'chain of lease' scenarios provided the other requirements are met, particularly when item 3 of that table would apply to the same scenarios. However, the text of the legislative provision does not facilitate item 4's application to a situation where the lessee did not make the taxable importation. We acknowledge the comments in relation to paragraph 58 of GSTR 2017/D1 however the Commissioner is bound to apply the law as it is written. A Practical Compliance Guideline approach is not available in these situations. We are currently exploring all of the options available to the Commissioner to address this issue in

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	intention of the B2B changes to the GST Act, which were specifically aimed at keeping non-residents out of the Australian GST net where this would result in no net loss to revenue. 'We recommend that the Commissioner exercises his remedial power (CRP) to enable item 4 to apply to any lease in a chain lease structure (subject to meeting the requirements of item 3). We confirm the CRP is consistent with the intended purpose of the law and will not have a budget impact as in our experience, interposed entities currently register to recover any GST charged. 'In the alternative, we consider that if this strict interpretation is maintained, the Commissioner should consider issuing a PCG to ameliorate the GST burden for non-resident taxpayers as well as the ATO in complying with the literal interpretation.'	terms of the application of items 3 and 4 in the table in paragraph 9-26(1)(c) when the lessee of the new owner did not make the taxable importation.
2	**Paragraph 57** 'Item 4 should likewise be extended to the new lease from the owner to the relevant lessee, such that the new lease is also disconnected from the indirect tax zone.' '…it is most common for the chain of leases to commence outside of the indirect tax zone, whereby the ultimate sub-lessee is the importer of the goods, and the non-resident lessors further up the chain do not make supplies connected with the indirect tax zone and are therefore not registered or required to be registered for GST. '…the concession under Item 3 should also be extended to Item 4. Should the concession not be extended, the following implications	This issue is related to issue 1. The text of the legislative provision does not facilitate the same interpretation for item 4 in the table in paragraph 9-26(1)(c) as taken for item 3 in the table in paragraph 9-26(1)(c) due to differing facts concerning chains of leases.

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	arise: • The new non-resident owner will be required to register for GST, despite not incurring GST on the acquisition of the goods. • The non-resident lessee will need to register for GST in order to claim input tax credits for the GST payable to the new non-resident owner. As the terms of the sub-lease to the resident sublessee will not change, the non-resident lessee will not need to apply GST on the sub-lease. • We acknowledge that the non-resident owner and non-resident lessee could enter a reverse charge under Division 83, however this still requires the non-resident lessee to register for GST where it has not previously been required to do so. 'The registration of the non-resident entities provides no advantage to the Commissioner, as any GST payable would be recovered as an input tax credit. '…in some cases a non-resident owner may enter a sale and leaseback of leased goods, whereby the original chain lease remains unchanged. That is, the only new transaction, apart from the sale, is that of a lease from the new non-resident owner to the original non-resident owner. '… the concession afforded under Item 3 should be extended to Item 4, such that the lease between the new non-resident owner to the original non-resident owner is disconnected from the indirect tax zone.'	
3	'The draft Ruling still does not address any of the more complex	This issue is related to issue 1.

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	supply chain matters that arise, such as supplies of goods in bond or supplies of consignment sales (for example, consignee imports, consignor imports), or title transfers before/after importation. The inclusion of some examples using more complicated facts patterns would be very useful.'	We are currently exploring all of the options available to the Commissioner to address the issue of chains of leases in terms of the application of items 3 and 4 in the table in subsection 9-26(1).
4	'Whilst a minor point, we think it would be helpful to use an Ireland Co rather than Indonesian Co for the purposes of illustration at Example 10.'	Agreed, Example 10 has been updated in the final Ruling.
5	'The reference to subsection 9-25(6) in paragraph 44 of GSTR 2017/D1 should be to section 9-26.'	Agreed, this change has been made in the final Ruling. A footnote has been added to paragraph 42 to reference subsection 9-25(6).
6	'…the guidance contained in the numerous examples in GSTR 2000/31 is lost. A number of the relevant examples are specifically identified below. 'At paragraph 11 the ruling uses the phrase, 'where the goods are at the relevant time'. Use of the term 'at the relevant time' is confusing given there is no 'time of supply' rule. We suggest the following rewording of the sentence to give clarity and help define the time at which the supply is made (in **bold** below): *'The terms 'delivered' and 'made available' look at the place where the goods are* ***located at the time they are delivered or made available****.'*	No change has been made in the final Ruling. The GST Act does not contain time of supply rules. The words 'where the goods are at the relevant time' in paragraph 11 of GSTR 2017/D1 (and paragraph 10 of the final Ruling) indicate this is a factor that needs to be considered when looking at the terms 'delivered' and 'made available'.
7	'The draft Ruling makes reference to Goods and Services Tax Ruling GSTR 2003/15 *Goods and services tax: importation of goods into Australia* for guidance on who is the 'importer'. However, it would be more useful if there was some commentary on that (such as what incoterms (International Commerce Terms)	No change has been made in the final Ruling. It is considered that GSTR 2003/15 contains the relevant discussion.

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	typically mean 'the supplier imports') in this ruling too.	
8	It would be useful to have another example under the heading 'Supplies of goods from Australia' (paragraphs 23 to 30), where the supply is not connected with the Indirect Tax Zone.	No change has been made in the final Ruling. There are two existing examples illustrating when goods are removed from Australia and when goods are supplied by way of lease.
9	Paragraph 25 states that '[subsection 9-25(2)] does not apply where removal is not part of the supply.' This issue comes up quite often in sales of aircraft, where the title to the aircraft passes while the aircraft is outside Australia, but the sale contract does not reference any transportation of the goods. While there are the special rules in section 9-26 dealing with the sale of leased goods, the exception in that section is quite narrow and doesn't always apply. There is further commentary on the issue in Goods and Services Tax Ruling GSTR 2002/6 *Goods and Services Tax: Exports of goods, items 1 to 4A of the table in subsection 38-185(1) of the A New Tax System (Goods and Services Tax) Act 1999* (starting at paragraph 177). It seems the draft Ruling effectively just repeats the existing comments in Goods and Services Tax Ruling GSTR 2000/31 *Goods and services tax: supplies connected with Australia*, however, it would be useful if the draft Ruling went further. At a minimum, the draft Ruling should reference the specific discussion in GSTR 2002/6 as well as include an example in the draft Ruling to clarify the comments in paragraph 25.	No change has been made in the final Ruling. Whether a supply involves goods being removed from Australia depends on the facts and circumstances of the case. As each case differs it would difficult to provide sufficient guidance in a public ruling and would be more appropriate to request a private ruling.