

GST on Exports of Goods – the new GSTR 2002/6

A discussion and critical analysis of the recently-released ruling on the GST on Export of Goods

In its first ruling in an expected series of three on the GST on exports of various types, GSTR 2002/6 addresses the somewhat uncontroversial area of GST on exports of goods.

GSTR 2002/6 focuses solely on the GST on sales of goods and not leases or hires of goods. Also, the ruling does not consider the GST on exports of services and rights, which will be the subject of two later rulings.

OVERVIEW

Relevantly there are four items in the table in s 38-185(1) of *the GST Act* dealing with the GST treatment of exports of goods including ships and aircraft. In the most common case of a non-instalment sale of goods other than aircraft or ships, an export of goods is GST-free if:

- there is a supply of goods – being any form of tangible personal property; and
- the supplier exports them from Australia; and
- the export occurs before or within a 60 day period or such further period as the Commissioner allows. Where a supplier does all that it can legally and commercially do to export goods within 60 days, it will be treated by the ATO as having exported the goods within the 60 day period.

There are special rules in relation to instalment sales and sales of aircraft and ships, but these are broadly similar to those in relation to non-instalment sales of other goods and will not be considered in this article.

MEANING OF 'EXPORT'

Since the word 'export' is not defined in *The GST Act* it takes on its ordinary meaning of sending goods to other countries or places for sale or exchange, or taking goods out of one country with the intention of landing them in another. For goods to be exported, they must be physically transported out of Australia, the mere intention of the supplier to export is not sufficient for there to be an export.



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Also, it is worth noting that an export does not occur where an Australian branch of a foreign company moves goods from its Australian branch to its head office.

MEANING OF 'AUSTRALIA'

For the purposes of *The GST Act*, 'Australia' includes all land territory except external territories, the coastal sea and the installations described in s 5C of *The Customs Act 1901*.

SUPPLIER EXPORTED GOODS

Subject to my comments below on recipient exported goods, to be GST-free the supplier of goods to be exported must be the entity that exports the goods. In GSTR 2002/6, the ATO interprets this to mean either that:

- the supplier has to contract at its own expense with an international carrier for the transportation of the goods to a destination outside Australia; or
- the supplier has to be responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged by another party to transport the goods to a destination outside Australia.

Practically speaking, goods will be treated as exported by a supplier where the supplier's name appears on the international transport document as 'shipper' and it pays the transport operator for the costs of transportation. This is the case even if the supplier recoups the transport costs from the buyer of the goods.

However, where a supplier is only responsible for delivery of goods at a place inside Australia and to a person in Australia who, or that, is not a ship or airline operator, the supplier is not considered by the ATO to be the exporter. In such a case the supply will be liable to pay GST.

DELIVERED DUTY PAID (DDP), COST INSURANCE AND FREIGHT (CIF) AND CARRIAGE PAID TO (CPT)

Contracts to send goods outside of Australia on these terms will usually be GST-free. This is because under such terms, the supplier is responsible for contracting with a carrier to transport the goods to a named overseas destination.

FREE ON BOARD (FOB)

Contracts on such terms will also usually be GST-free. This is because on FOB terms, the supplier is responsible for delivering the goods on board a ship that has been engaged to carry them to an overseas destination.

FREE ALONGSIDE SHIP (FAS) AND FREE CARRIER (FCA)

Similarly, a supplier exports goods where the goods are sent from Australia under a contract of sale on FAS or FCA terms provided:

- the named place of delivery is an international port or airport; and
- the carrier to whom the goods are delivered, is the operator of the ship or aircraft.

Under such terms a supplier is responsible for delivering the goods to the operator of a ship or aircraft who, or that, has been engaged to carry them to an overseas destination.

However, a supplier does not export goods where the supplier's responsibility only extends to delivering the goods in

Australia to a person who is not an operator of a ship or aircraft engaged to carry them out of Australia. A supplier does not export under a contract of sale with FCA terms where the carrier to whom the goods are delivered is not the operator of a ship or aircraft, for example, a freight consolidator.

THE 60 DAY REQUIREMENT

This requirement is met if the ship or aircraft to carry the goods out of Australia departs its final Australian port or airport and leaves Australia before, or within 60 days or such further period as a Commissioner allows after, the time period commences.

The usual 60 day period commences on the day after the earlier of:

- the day on which the supplier receives any of the consideration for the supply; or
- the day the supplier gives an invoice for the supply.

Practically speaking however, the ATO accepts that all that a supplier needs to do is to hand over possession of the goods to an international transport provider before or within a 60 day period.

RECIPIENT EXPORTED GOODS

In addition to supplier exported goods, *The GST Act* provides for the GST-free treatment of some recipient exported goods – but only where the following five conditions are satisfied and the export occurs within the 60 day period:

- before the goods are exported, the supplier supplies them to an entity that is not registered or required to be registered; and
- that entity exports the goods from Australia. The requirements here are the same as those for supplier exported goods, that is, the exporting must be at the recipient's expense and the recipient must be the party delivering the goods; and

- the goods have been entered before export within the meaning of s 113 of *The Customs Act*; and

- since their supply to that entity the exports have not been altered or used in any way except to the extent, if any, necessary to prepare them for export. In this regard, the ATO considers that 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; and

- the supplier has sufficient documentary evidence to show that the goods were exported.

DOCUMENTARY EVIDENCE

To show that a supply is a GST-free export, a supplier must keep sufficient documentary evidence to show that the requirements of *The GST Act* have been satisfied. The supplier should obtain such documentary evidence during the process of exporting the goods or within a reasonable period of time after the goods are exported. The ATO considers that a supplier has sufficient documentary evidence where the supplier has sufficient documentation for a person independent of the transaction to reasonably conclude that there has been an export of goods that satisfies the relevant GST-free requirements.

CONCLUSION

In so far as the GST treatment of exports is concerned, GSTR 2002/6 dealing with goods is undoubtedly the least controversial of the ATO's rulings on the subject matter. Significantly more controversial is its expected ruling on the GST on exports of services, due out shortly. ♦

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