

Treasury Discussion Paper

GST and Cross-Border Transport Supplies

NOTE TO PARTICIPANTS

This discussion paper provides information on the design of the proposed changes to the GST law affecting cross border transport that will give effect to the Budget announcement. We invite interested parties to lodge written submissions on the design of the proposed amendments. Authors should be mindful that the Government's intention is to reduce compliance costs within the existing broad policy framework. Further details on the procedure for making submissions are found at the end of this paper.

The contents of this paper are the preliminary views of the Treasury and do not represent the final views of the Government or the Treasury.

INTRODUCTION

1. In the 2009-10 Budget, the Government announced that it will amend the GST law to reduce GST compliance costs for businesses involved in the domestic transport of exported and imported goods, with effect from 1 July 2010.
2. Please note that cross border GST issues more generally will be addressed in a separate review (also announced in the 2009-10 Budget) to be undertaken by the Board of Taxation. The terms of reference for the Board of Taxation GST cross border review are on the Board of Taxation website (www.taxboard.gov.au).

BACKGROUND

Current law

GST on the transport of imported goods

3. GST is payable on all taxable importations and the value of the goods for this purpose is determined by calculating the Value of Taxable Importation (VoTI).¹ The VoTI includes the value of the international transport to the 'place of consignment'.

Non-postal goods

4. For non-postal imports the 'place of consignment' for goods is the port or airport of final destination as indicated on the transportation document (GST Act, section 195-1). GST on taxable importations is paid by the importer (or their agent) at the time of passage

1 Customs duty or GST is not collected on imports valued under \$1000.

through the customs barrier (or deferred to the next business activity statement if authorised by the Tax Office).

5. Under item 5 in the table in section 38-355 of the GST Act, the international transport of goods is GST free from the place outside Australia to place of consignment for the primary transporter. Therefore, an international transport company that is contracted to deliver non-postal goods from London to Canberra (under DDP or DDU terms²) would make a taxable supply in arranging the transport of the goods from the point of consignment (say, Sydney airport) to Canberra. This international transport company will use a domestic transport company to undertake this transport service. The domestic transport company also makes a taxable supply because the supply of transport *made* to the international transport company is *provided* to another entity in Australia (the addressee). A non-resident international transport company would generally be required to register for Australian GST as they are making taxable supplies and may wish to claim input tax credits.

Postal goods

6. For postal goods (those less than 31.5 kg), the cost of the domestic transport supply is factored into the VoTI calculation at the customs barrier because the 'place of consignment' for postal goods is the place in Australia to which the goods are addressed, rather than just the port or airport. As the place of consignment is the delivery address, the primary transport supplier is therefore making a GST free supply of international transport (under item 5 of section 38-355) all the way to the delivery address rather than just to the port or the airport.

GST on the transport of exported goods

7. Under section 38-355 of the GST Act, the domestic transport of goods to be exported is GST free for the *primary* transport provider from the 'place of export'. For *non-postal* goods, the 'place of export' is generally the place where they were packed in a freight container. This means that the transport of goods to be exported by the primary transport provider prior to placement in the freight container may be subject to GST.

8. In addition, subcontractors involved in transporting goods that are ultimately exported may transport these goods with other goods that are for domestic consumption (a taxable supply) in a mixed load. In these cases, the subcontractors must apportion their supply into taxable and GST free components depending on the final destination of the particular goods.

PROPOSED CHANGES TO THE GST LAW

Principle 1: Shift the legal incidence of the GST paid on the domestic transport of imported goods

9. A change will be made to the law to shift the incidence of the GST payable on the supply of domestic transport of imported goods (imported on DDU and DDP terms) from

2 The scenario described here arises when goods are traded on a delivery duty paid (DDP) or delivery duty unpaid (DDU) contractual basis only, in which the seller of the goods is responsible for all the costs involved in delivering the goods to the named place of destination. Under other international contractual arrangements (for example, Free On Board), the buyer is responsible for delivery of the goods to the domestic destination after Customs clearance and so delivery is ordinarily a taxable supply in Australia.

the suppliers of the transport service itself to the goods themselves, through inclusion of the value of the domestic transport in the VoTI calculation.

10. This will result in the incidence of the tax falling on the importer of the goods, rather than, initially, the domestic transport supplier and consequently any non-resident entity with a responsibility to provide the transport of the imported goods. This will require changes to the law to add the value of the domestic transport component to the VoTI and require making GST free a supply of domestic transport services made to a foreign entity for imported goods.

Commentary

11. This amendment will extend the provisions for postal goods to non-postal goods. The supply of domestic transport of imported goods will be made GST free and the cost of the domestic transport supply will be included in the VoTI calculation. This will reduce the need for non-residents to register for the GST which imposes significant compliance costs on them and the Tax Office.

12. To make the domestic transport service supply GST free, the GST Act will be amended so that domestic delivery into, or the domestic transport of goods through Australia, is GST free when the service is provided as part of an international transport service to a non-resident entity.

13. To include the cost of the domestic transport supply in the VoTI calculation, the definition of international transport in the GST Act will be amended to include the domestic transport leg. One way to achieve this is to align the 'place of consignment' definition for non-postal items with the current definition for postal items, that is, the place to which the goods are addressed.

14. It is expected that adding the value of domestic transport into the VoTI calculation will require some changes to Customs' Integrated Cargo System and related recording systems. These changes will require some time to implement. It is for this reason that the date of commencement of the new arrangements will be 1 July 2010.

Principle 2: Change the 'place of export' of non-postal containerised goods

15. The 'place of export' of non-postal containerised goods for the primary transport provider will be redefined in the law (section 195-1) from the place of 'containerisation' to the place from which they are collected by the transport company (that is, the place from which the goods are sent). The tax treatment of the pre-containerisation leg of a non-postal export supply therefore will be aligned with the treatment of a postal export supply.

Principle 3: Make taxable the transport supplies made by resident transport subcontractors employed in the domestic leg of an export chain

16. A transport supply by a resident transport subcontractor, employed in the domestic leg of an export chain (which is currently GST free), will be accorded the same GST status (taxable) as a domestic-to-domestic supply that does not result in the goods being exported overseas.

Commentary

17. This change to the law will remove the need for the domestic subcontract service supplier to know the ultimate destination of goods they carry in order to give separate GST treatment in cases where the goods are ultimately destined for overseas.

18. The purpose of the change is to remove the compliance burden on domestic-to-domestic subcontractors who may currently need to apportion supplies between being taxable and GST free in situations where some of their transported load is for export and some is for domestic consumption.

19. It is proposed that the GST Act be amended so that if the supply of a transport service which is part of an export transport supply is not rendered GST free by section 38-355 item 5, (due to the same supplier provisions in the caveat in section 38-355 item 5), then this taxable status is not removed by the effect of section 38-190(4).

Focus question:

Are the proposed amendments to the legislation the best way to give effect to the changes to the law announced by the Government?

SUBMISSIONS

20. Submissions may be lodged electronically, by post or by facsimile, with electronic lodgement preferred. The closing date for submissions is **Wednesday 17 June 2009**.

21. All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* for access to a submission marked 'confidential' will be determined in accordance with that Act.

22. Written submissions, clearly marked **GST AND CROSS BORDER TRANSPORT** should be addressed to:

The General Manager
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Fax: (02) 6263 4320

Email: GSTcrossbordertransport@treasury.gov.au

23. General enquiries should be made in the first instance to Mr Brian McKay on (02) 6263 2035.